THE STATE OF TAXPAYERS' RIGHTS IN JAPAN

A Survey of the Legal Situation

Edited by

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Foreword

In recent years, governments of developed countries such as the United States of America, Canada and the United Kingdom have taken positive steps to reinforce the fairness and transparency of their respective tax administration systems. Particularly noteworthy in these attempts has been the establishment of a comprehensive set of 'taxpayers' rights'. This has involved the enactment or amendment of general administrative procedure laws or specific tax procedure laws, as well as the publication of an easily comprehensible Declaration of Taxpayer Rights. Taxpayer's Charter, Taxpayer's Bill of Rights, etc. The respective governments and tax authorities have thus conveyed to taxpayers their sincerity in promoting fairness and transparency.

The OECD published a report in 1990 entitled *Taxpayers ' Rights and Obligations*: A Survey of the Legal Situation in OECD Countries. The International Fiscal Association (IFA) has recently adopted several research themes which relate to taxpayers ' rights, such as Taxation and Human Rights (1988) and Protection of Confidential Information in Tax Matters (1991). This display of interest by major international bodies is a testament to the weight being attached to taxpayers' rights at the highest levels.

The Japanese tax administration system has always been based on the premise that the tax authorities were the dominant party. As will be seen in the chapter on tax audits in this volume. many details of tax administration are left to the discretion of the tax authorities. which has led to the prevalence of procedures that are not fully fair and transparent. For this reason, there has been a longstanding movement in Japan to achieve taxpayers' rights - fair and transparent tax administration that is managed from the standpoint of the taxpayer rather than the authorities. This movement has been supported not only by academics and zeirishi ('certified tax accountants' or 'tax attorneys'), but also by broad-based taxpayer associations and consumer groups.

Despite such demands from tax specialists and taxpayers, the government and tax authorities remain unreceptive to an overhaul of the current tax administration system. Until now. the *zeirishi* associations and taxpayer associations have submitted many concrete proposals to establish taxpayers' rights, such as draft bills to streamline tax procedures or to allow access to information held by the tax authorities. However. the government and the tax authorities have not responded positively to these suggestions.

This volume was written to provide an English-language resource on the Japanese tax administration system, with the aim of obtaining comments from readers from other countries and from international bodies to promote the fairness and internationalization of the Japanese tax administration system.

Previous publications on the Japanese tax system were from the viewpoint of tax accounting or public finance. Typical examples are Y. Gomi, *Guide to Japanese Taxes* (annual CCH) and H. Ishi, *The Japanese Tax System* (1993 Oxford U.P.). It is difficult to fully understand the state of procedural tax law from these sources. So, this book sets out to introduce the Japanese tax system to foreign readers from a legal, administrative and procedural perspective.

Although there are a small number of sophisticated articles available on the Japanese tax administration system, these are inevitably written from the stance of the

government or the tax authorities. For this reason, it is feared that the true state of taxpavers' rights are not known abroad. This volume aims to fill that void by providing as much accurate detail as possible on the tax administration system from the point of view of taxpayers and tax practitioners. In particular, in order to serve as a resource when Japan's partner countries and bodies such as the OECD debate topics during Structural Adjustment Conferences, this book provides an introduction to assessment and collection procedures, analyses the *zeirishi* system, discusses the true state of audit procedures and administrative guidance by tax authorities, and outlines some problems with the recent Administrative Procedure Law and the need for public access to information held by the tax authorities.

This volume is the result of combined research by Mr Kozo Koike and Mr Yukio Kasuya, both practitioners in the tax area, and myself, who teach tax law. I performed the editorial function.

The original Japanese text was assiduously translated into English by Mr Peter Neustupny. Thanks are also due to Professor Malcolm Smith, Director of the Asian Law Centre at the University of Melbourne, for valuable assistance leading to the publication of this book.

This volume would not have been possible without the financial support of the Tokyo Certified Public Tax Accountant (*Zeirishi*) Association, and I take this opportunity to express my sincere gratitude to that body.

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Summary of Contents

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Table of Contents

Chapter 4 Tax Audits and Post-audit Procedures

Chapter 5 Tax Collection Procedures

Part I

The Tax Administration System and the Zeirishi System

Chapter 1

Tax Administration

l.1. The Nature of procedural Tax Law

Tax procedures can be divided broadly into:
(a) procedures to determine the amount owing under a tax obligation (assessment procedures);
(b) procedures relating to the payment and collection of taxes as determined by assessment procedures (collection procedures); and
(c) dispute resolution procedures.

The nature of tax is to exercise public powers (by way of imposing a monetary burden) over private assets. Since Japan is a constitutional government. fundamental authority for taxation must be derived from the Constitution. Articles 30 and 84 of the Constitution of Japan[1] provide the basic principle for tax laws, according to which public rights of taxation can only be exercised through national legislation.[2] This applies equally to substantive and procedural tax law.

In exercising the public power of taxation, it is important for the tax authorities to have the cooperation of the taxpayer in making payments. To this end, tax procedures need to fair and transparent, and need to be set out in as much detail as possible in legislative form. Other information relating to tax procedures needs to be widely available. The taxpayer will then be on an equal footing with the tax authorities.

l.2. Sources of Procedural Tax Law

There are many sources of law in the field of tax procedures. Of these, the most important are outlined below.

(1) *The Constitution*

Article 31 of the Constitution guarantees that no person shall be deprived of life or liberty or have a criminal penalty imposed upon them except according to procedures established by law. This article was originally understood to relate mainly to criminal procedure. However, it is now generally considered to apply to all administrative procedures,[3] including tax procedures. But even if Article 31 does apply to tax procedures, it is not possible to derive specific procedures directly from this general provision, so detailed procedures need to be provided for in legislation in accordance with the procedural fairness guaranteed by Article 31. Further, Article 13 of the Constitution states that individual freedoms and rights are to be given the utmost

respect in governmental matters. This provision also leads to the conclusion that fairness in tax procedures is essential.[4]

(2) *The Administrative Procedure Law*

The Administrative Procedure Law[5] of 1993 applies to administrative procedures generally. However, the application of this Law to taxation procedures is almost entirely excluded. The Law was enacted following consultations between officials of the various government ministries and bureaus: the representatives of the Ministry of Finance were not positive towards the application of the Law to tax procedures. The result is that the 0Administrative Procedure Law is a source of law for tax procedures in form only. This state of affairs has been roundly criticised by tax academics and within *zeirishi* circles.[6]

(3) *The National Taxes Common Provisions Law*

Japanese tax laws have never been compiled into one comprehensive code. For this reason, there were no unified procedures covering the different types of taxes. The National Taxes Common Provisions Law[7] was enacted in 1962 to remedy this situation.

This Law achieved consistency in procedures that were common to various types of tax. It also made clear some basic elements of the obligation to pay tax and established the system of administrative review.

The National Taxes Common Provisions Law is therefore a very important source of law in procedural tax law.

(4) *The National Taxes Collection Law*

The National Taxes Collection Law[8] of 1959 is also an important source of law in this area. This Law provides for delinquency dispositions (compulsory collection) and sets out the relationship between national tax obligations and other obligations.

(5) *The National Taxes Infringement Control Law*

The National Taxes Infringement Control Law [9] of 1900 was enacted to provide special procedures for audit and management of cases of infringement such as tax evasion. The Code of Criminal Procedure applies generally to criminal procedure, but the National Taxes Infringement Control Law applies in priority to the Code in accordance with the interpretive principle that special provisions apply in priority to general ones.

(6) *The Local Taxes Law*

Local public bodies are ensured their autonomy by the Constitution.[10] However, local public bodies may only exercise taxation powers by enacting municipal ordinances (jorei) within the framework of the Local Taxes Law [11] enacted by the National Diet. The Local Taxes Law has been criticised as a constraint on the autonomy guaranteed by the Constitution .

The Local Taxes Law has an important role as a source of law for procedures relating to local taxes.

(7) *Cabinet Orders and Ministerial Ordinances*

Regulatory standards created by administrative bodies are known collectively as orders. which can be divided into cabinet orders (*seirei*) or enforcement orders (*sekorei*) issued by the Cabinet. and ministerial ordinances (*shorei*) or enforcement regulations (*seko-kisoku*) issued by individual ministries and agencies.

In the area of tax law, orders are created to enforce particular tax laws, for instance the National Taxes Common Provisions Enforcement Order [12] of the National Taxes Common Provisions Law Enforcement Regulations.[13]

It is common in Japan for tax legislation to contain only the basic and general provisions concerning a tax, leaving details to cabinet orders or ministerial ordinances. This method of regulation conflicts with the principle contained in Article 84 of the Constitution that "no taxes shall be imposed except by legislation", and there has been criticism that the executive is in fact exercising a legislative function. However, despite such criticisms, in practical terms orders are an indispensable source of law for tax procedures.

(8) *Announcements*

According to Article 14(1) of the National Government Organization Law,[14] each minister or director of a bureau or agency can make known to the public a decision, designation, etc. in his or her field of jurisdiction by making an announcement (*kokuji*). At first sight, the purpose of an announcement might seem to be merely to make the general public aware of a particular fact. However, it is not uncommon to use announcements to publish taxation matters that has a great influence on the rights and obligations of the taxpayer. For this reason, this type of announcement has been steeped in criticism as a type of executive legislation that contradicts Article 84 of the Constitution. However, in practical terms, announcements must be considered a source of law for tax procedure.

(9) *Instructions and Circulars*

When superior administrative bodies give commands or directions to an inferior body, the normal means is oral supervision rather than issuing an instruction (*kunrel*) or circular *(tsutatsu*). An instruction is a command issued by a superior administrative body to an inferior body to supervise the latter's exercise of power, and contains general directions on the basis of the activities of the body or its officials: circulars are used to provide detailed provisions, interpretations of laws and regulations, and operational policies.[15] However, the difference between instructions and circulars is not always clear, so both will be treated together in this section.

Circulars can be divided into basic circulars (*kihon tsutatsu*) and individual circulars (*kobetsu tsutatsu*). Basic circulars go through the tax laws article by article, giving the tax authority's interpretation of the law and principles for its application. Examples are the National Taxes Common Provisions Law Basic Circular[16] and the Income Tax Law Basic Circular.[17] Individual circulars give the authority's opinion in relation to situations that are not general or universal, and do not warrant inclusion in a basic circular.

As commands issued from superior to inferior administrative bodies. circulars are binding within the administration, but have no legal force on taxpayers or the courts and are thus not strictly a source of law. In spite of this, circulars are in fact used to resolve issues in the administration of the tax system, and taxpayers can expect tax laws to be applied according to the circulars provided that no dispute is foreseen: circulars thus do have a real effect on parties outside the administration.

Circulars cannot be used to create tax obligations or exemptions beyond what is provided
for in tax laws. It has been proposed that, since circulars do have a great influence on the *de facto rights* and obligations of taxpayers. their creation should be subject to control by a democratic process to reflect the voice of the taxpayer.[18]

(10) *Precedents (Senrei)*

The district courts, high courts and Supreme Court produce many judgments and determinations on tax matters each year. Many of these are published in law reports.

Such judgments and determinations resolve particular disputes. However, where the interpretations of law contained therein are well reasoned and of general applicability, they may be followed in subsequent cases. Thus they can serve the function of a source of law for tax procedure.

Further, the National Tax Tribunal, which falls under the umbrella of the National Tax Administration, operates to resolve disputes concerning dispositions by the tax authorities relating to national taxes. The Tribunal reviews many tax cases and renders adjudications (*saiketsu*) accordingly. Representative adjudications are published in the National Tax Tribunal Reports.[19]

The National Tax Tribunal is able to make adjudications that contradict opinions expressed in circulars of the Commissioner of the National Tax Administration. However. the Tribunal must make application to the Comimissioner before doing so, giving the Commissioner an effective power of veto. There has been criticism of this situation.[20]

Adjudications of the National Tax Tribunal resolve particular disputes. Most adjudications do not interpret new laws, and few are considered precedents.

l.3. The Structure of Tax Administration

1.3.1. The Structure of Tax Administration for Domestic Taxes

The administrative structure[21] for domestic taxes[22] is shared between the Tax Bureau (*shuzeikyoku*) of the Ministry of Finance and the National Tax Administration. In relation to domestic taxes, the Tax Bureau of the Ministry of Finance plans and drafts tax legislation, and conducts investigations into tax revenue and settlement of revenue accounts. It submits drafts of laws, cabinet orders, ministerial ordinances and announcements to the government. In relation to laws and cabinet orders, the Bureau is under the supervision of the Cabinet Legislation Bureau (*naikaku hoseikyoku*), but not for ministerial ordinances and announcements. It is very rare for draft legislation to be

amended by the National Diet in the tax area: for this reason, it is said that the drafting process in the Tax Bureau is the most important stage for incorporating the wishes of the populace.[23]

1.3.2. The National Tax Administration

The National Tax Administration (*kokuzeicho*) is an external bureau of the Ministry of Finance. It has no responsibility for drafting tax laws, concentrating instead on the assessment and collection of domestic taxes and the creation of circulars in relation to these matters. Internal subdivisions of the National Tax Administration are the Commissioner's Secretariat, the Taxation Department, the Revenue Management and Collection Department and the Examination and Criminal Investigation Department. The National Tax Administration consists of the Main office, the Regional Taxation Bureaus (branch offices), the Okinawa Regional Taxation Office, Tax Offices, the National Research Institute of Brewing (*jozo shikensho*), the National Tax College (*zeimu daigakuko*) and the National Tax Tribunal (*kokuzei fufuku shinpansho*). As at 1994, the National Tax Administration had 56,752 employees, of whom 597 were in the Main Office, 55,294 in the Regional Taxation Bureaus, the Okinawa Regional Taxation Office and the Tax Offices, and 861 in the National Research Institute of Brewing, the National Tax College and the National Tax Tribunal.[24] Regional Taxation Bureaus are found in 11 major cities, supported by 522 Tax Offices and one Branch Office. Tax Offices have direct contact with taxpayers, accepting returns and conducting audits and collection under the supervision of the Regional Taxation Bureaus.

l.3.3. The Main Office of the National Tax Administration

Below the Commissioner and Deputy Commissioner at the Main office of the National Tax Administration (*kokuzeicho honcho*) are the Commissioner's Secretariat (*chokan kanbo*), the Taxation Department (*kazeibu*), the Revenue Management and Collection Department (*choshubu*) and the Examination and Criminal Investigation Department (*chosa-sasatsubu*).

The Commissioner's Secretariat has a coordinating function over the other Departments and organs. The Secretariat contains the Office of International Operations, which deals with research. planning and drafting in relation to international matters that fall within the jurisdiction of the National Tax Administration.

The Taxation Department deals with imposition of national taxes, other than those assigned to the Examination and Criminal Investigation Department, and the finalization of liquor prices.

The Revenue Management and Collection Department contains a Revenue Management Division (*kanrika*) and a Collection Division (*choshuka*). The Department supervises the Regional Taxation Bureaus and Tax Offices in the management and collection of national tax debts.

The Examination and Criminal Investigation Department is made up of the Examination Division (*chosaka*), the Criminal Investigation Division (*sasatsuka*) and the Director of International Examination (*kokusai chosa kanrikan*). The Department supervises the Regional Taxation Bureaus in audits of large-scale corporations (capitalized at

¥100,000,000 or more) and investigations (compulsory audit under the National Taxes Infringement Control Law) of large-scale tax evaders.

l.3.4. Regional Taxation Bureaus and the Okinawa Regional Taxation Office

Regional Taxation Bureaus (*kokuzeikyoku*) are located in Tokyo, Kanto-Shin'etsu, Osaka, Sapporo, Sendai, Nagoya, Kanazawa, Hiroshima, Takamatsu, Fukuoka and Kumamoto. The Regional Taxation Bureaus and the Okinawa Regional Taxation Office (*Okinawa kokuzei .jimusho*) operate under the supervision of the National Tax Administration. The Regional Taxation Bureaus in turn supervise the Tax Offices, as well as conducting audits into large-scale corporations.

Below the Regional Commissioner, each Regional Taxation Bureau has a Coordination Department (*somubu*), a Taxation Department (*kazeibu*), a Collection Department (*choshubu*), an Examination Department (*chosabu*) and a Criminal Investigation Department (*sasatsubu*). Within the Taxation Department, the Information and Examination Section (*shiryo-chosaka*) manages collection of information and data relating to direct national taxes and audits complicated cases.[25]

1.3.5. Tax Offices

Tax offices (*zeimusho*) supervise and audit taxpayers' activities directly, under the direction of the Regional Taxation Bureau, Tax Offices consist of a Director and Deputy Director. then four divisions: Coordination Division (*somuka*). Revenue Management and Collection Division (*kanri-choshu bumon*). Individual Taxes Division (*kojin-kazei bumon*) and Corporate Taxes Division (*hojin-kazei bumon*). At larger Tax Offices, there may be further sub-divisions within these Divisions.

The Coordination Division takes receipt of tax returns and other documents, oversees internal Tax Office affairs and keeps the Tax office accounts. The Revenue Management and Collection Division is responsible for receipt of payments, tax refunds, management of overdue payments, etc. The Individual Taxes Division provides assistance with returns and conducts audits in relation to income tax. consumption tax, inheritance tax, etc. for individual taxpayers. The Corporate Taxes Division has a similar capacity in relation to corporate tax and consumption tax, as well as managing the withholding tax system. The Individual and Corporate Taxes Divisions are generally sub-divided into smaller units with specific areas of responsibility, with working groups of six to eight officials each under the control of a Coordinating Officer. Within the Audit Unit of the Individual Taxes Division, Corporate Taxes Division or Revenue Management and Collection Division,[26]
responsibility for the decision to conduct an audit lies with the Coordinating Officer (*tokatsukan*). Audits to assess taxpayer complaints are handled by the First Units of the Individual and Corporate Taxes Divisions, which otherwise deal with internal affairs. For relatively large-scale audits that still fall within the ambit of the Tax Office, Special Officers (*tokkan*) are assigned. Special Officers must have a nominated term of experience as Coordinating Officers to gain appointment.

1.3.6. Administrative Structure for Customs and Tariffs

Customs and tariffs are dealt with by the Customs and Tariffs Bureau within the

Ministry of Finance and the nine regional Customs Houses. The Customs and Tariffs Bureau conducts research, planning and drafting in relation to the customs and tariffs system, and supervises the administration of the system by the Customs Houses. The Customs Houses manage the customs system under the supervision of the Customs and Tariffs Bureau by assessing and collecting customs and tariffs, import tonnage tax, special import tonnage tax and domestic consumption taxes on imported goods, as well as regulating the import and export of freight, shipping and aircraft. The Director of the Customs House has formal responsibility for assessments and collection.

1.3.7. Administrative Structure for Local Taxes

Administration of local taxes is conducted partly by national administrative organizations and partly by organs of the local autonomous governments. The Local Tax Bureau (*zeimukyoku*) within the Ministry of Home Affairs conducts research, plannning and drafting in relation to the local tax system, provides advice on the operation of the system and produces circulars on the interpretation of local tax laws, orders and ordinances. Although the imposition and collection of local taxes is governed by local ordinances (*jorei*) there is such strict control from the Local Tax Bureau that it is virtually impossible for local governments to make independent ordinances.

Local structures for prefectural taxes include a Tax Department (*zeimubu*) or Tax Division (*zeimuka*), and below that a Tax Operations Office (*zeimu jimusho*) to deal with the practical operation of the system. Formal responsibility for imposing and collecting prefectural taxes lies with the Director of the Tax Operations Office.27 At the municipal level, there will be a Tax Department or Tax Division (depending on the size of the municipality) which deals with local ordinances and regulations on municipal taxes, the research, planning and drafting of proposals for rules and the assessment and collection of the taxes. Formal responsibility for assessment and collection lies with the municipal mayor.[28] Each municipality has a Fixed Assets Evaluation Council (*kotei-shisanzei hyoka shinsa iinkai*) to resolve disputes relating to the fixed assets tax.

1.3.8. The Powers of the Heads of Administrative Bodies

The Minister of Finance and the Commissioner of the National Tax Administration oversee the operations of their respective bodies and officials.[29]

The Minister of Finance has powers such as the power to institute legislation and cabinet orders,[30] the power to issue ministerial ordinances[31] and announcements,[32] and the power to issue instructions and circulars to personnel within his or her jurisdiction[33] The Minister thus exercises supervisory power over inferior administrative organs.

The Commissioner of the National Tax Administration has powers such as the power to issue regulations and other special commands,[34] the power to issue announcements, [35] the power to request the Minister of Finance to issue a ministerial ordinance,[36] and the power to issue instructions and circulars to organs and officials within his or her jurisdiction.[37]

The supervisory powers of the Minister and Commissioner can be exercised in relation to the allotted functions of their respective bodies. The supervisory powers of the Minister and Commissioner extend to all organs within the relevant hierarchy: if a

higher organ does not conduct all the functions allotted to it, it can do so indirectly by exercising supervisory control.[38]

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1 *Nihonkoku Kenpo*(1947).

2 ln Japan, it has been theoretically well established that the national revenue depends wholly on statute law: it is entirely a creature of parliamentary legislation.

3 See, for example, *Sanrizuuka-Shibayama Union League Against the Construction of Narita Airport v. Minister of Transport* (Supreme Court, July 1 , 1992) 46(5) *Minshu* 437, at 464.

4 See, for example, Kitano, Hirohisa, 'Reform of Tax Procedures and Taxpayers' Fundamental Rights' (1994) 22 *Sozeiho Kenkyu* [Japan Tax Law Review] 54, at 58. See also Ishimura, Koji, 'Issues in the Protection of Taxpayers' Rights and Reform of Tax Procedure' (1995) 67(3) *Horitsu Jiho* 33, at 36.

5 *Gyosei Tetsuzuki Ho* (Law No. 88 of 1993).

6 For a more detailed discussion of this Law, see Chapter 8 below.

7 *Kokuzei Tsusoku Ho* (Law No. 66 of 1962).

8 *Kokuzei Choshu Ho* (Law No. I 47 of 1959),

9 *Kokuzei Hansoku Torishimari Ho* (Law No. 67 of I 900).

10 Articles 92 to 95.

11 *Chihozei Ho* (Law No. 226 of 1950).

12 *Kokuzei Tsusoku Ho Sekorei*(Cabinet Order No.135 of 1962).

13 *Kokuzel Tsusoku Ho Seko-kisoku* (Ministry of Finance Ordinance No. 28 of 1962).

14 *Kokka Gyossei Soshiki Ho* (Law No. 120 of 1948).

15 Kitano, Hirohisa, *Principles of Tax Law < Third Edition*> [Zeihogaku Genron <Daisanpan>] (1992), at 161.

16 *Kokuzei Tsusoku Ho Kihon Tsutatsu* (1970 Chokan 2-43, etc.).

17 *Shotokuzei Ho Kihon Tsutatsu* (1970 Chokushin 30).

l8 Kitano *supra* n 15, at 161. See also Chapter 9 below.

19 National Tax Tribunal (ed.), *Annotated NTT Adjudication Reports* [Saiketsu Jirei Yoshishu] (yearly).

20 For a detailed analysis, see 6.7. below.

21 Under Article 3 of the National Government Organization Law, the administrative structures of the national government must be established by legislation. The relevant legislation for administrative structures dealing with national taxes are Ministry of Finance Establishment Law [*Okurasho Setchi Ho*] (Law No. 144 of 1949) and Ministry of Home Affairs Establishment Law [*Jichisho Setchi Ho*] (Law No. 261 of 1952).

22 According to National Taxes Common Provisions Law Article 2(1). "national taxes" are defined to mean those taxes levied by the national government, including customs and tariffs, import tonnage tax and special import tonnage tax. However. administration of customs and tariffs is entirely separate from other taxes. Therefore. the term "domestic tax" is used here to refer to all national taxes except customs and tariffs.

23 This situation is one cause for the enactment of many tax laws that do not represent popular will. There has been criticism of the reality that the National Diet is not fulfilling its legislative function in relation to taxation law. For more details, see 7.3. below.

24 Detailed Rules concerning Ministry of Finance staff levels are created under the authority of Ministry of Finance Personnel Rules [*Okurasho Teiin Kisoku*] (Ministry of Finance Ordinance No. 32 of 1969) Article 2.

25 Audits by special units within the Information and Examination Section have increased rapidly in recent years. Such audits are classed as so-called voluntary audits, but the special units attend the taxpayer's office, residence, financial institutions, etc. simultaneously and without prior notice, examining personal belongings and questioning third parties in a forceful manner, so that such audits have become problematic as a breach of the taxpayer's rights. These audits are in fact being carried out as if they were compulsory tax audits, *i.e*. criminal investigations. They have been strongly criticised as breaching the requirement for a search warrant in Article 35 of the Constitution and the requirement of procedural fairness in Article 31 . For more details about audits by the Information and Examination Section, see Urano, Hiroaki. *Taxpayers Have Their Say on Tax Audits* [Zeimu Chosa ni Monomosu] (1991). at 36 ff. The tendency is for the audit style of the special units of the Information and Examination Section to be adopted also for tax audits by the Tax Office. The National Revenue Employees Union (*zenkoku zei rodokumiai*) which organizes officials of the tax authorities has argued that this method of audit not only breaches the procedural rights of taxpayers, but also creates unnecessary conflict between officials and taxpayers and stress for the officials: see National Revenue Employees Union [*Zenkoku Zei Rodokumiai*], Taxation 1994 [Zei 94] (1994), at 63. See also 4.1.4.(4) below.

26 The responsibilities and jurisdictions of the various segments of the tax administration structure are well defined. "There is a clear distinction between the execution of the duties of the assigned duties of a Collection Officer and an Audit officer, so it is not possible for an Audit Officer who has completed assessment procedures in a particular case to go on to deal with collection procedures": Mural, Tadashi, 'The Basis and Structure of Tax Administration' (1984) 33 *Jurisuto Zokan Sogo Tokushu, Nihon no Zeikin* [Jurist Special Issue: Tax in Japan] 74, at 74.

27 Local Taxes Law Article 3-2.

28 Local Taxes Law Article 3-2.

29 National Government Organization Law Article 10.

30 National Government Organization Law Article 11.

31 National Government Organization Law Article 12.

32 National Government Organization Law Article 14(1).

33 National Government Organization Law Article 14(2).

34 National Government Organization Law Article 13(1).

35 National Government Organization Law Article 14(1).

36 National Government Organization Law Articles 12(2) and (3).

37 National Government Organization Law Article 14(1).

38 See Mural. *supra* n.26, at 74 ff.

Figure 1-1: Structure of the Ministry of Finance

Ministry of Finance	Ministy proper	bureaus	Minister's Secretariat	Financial Inspection Department	
			Budget Bureau		
			Tax Bureau		Coordination Division
					Research Division
					First Tax Division
					Second Tax Division
					Third Tax Division
					International Tax Affairs Division
			Customs and Tariffs Bureau		
			Financial Bureau		
			Securities Bureau		
			Banking	Insurance	
			Bureau	Department	
			International Finance Bureau		
		councils,			
		commissions and			
		commitees			
		special organs	Mint Bureau		
			Printing Bureau		
		auxiliary organs			
		local branch offices			
	affiliated agency	National Tax Administration			

Figure 1-2: Structure of the National Tax Administration, Regional Taxation Bureaus and Tax Offices

<table>
<tr><td rowspan="6">National Tax Administration</td><td>Commissioner's Secretariat</td><td rowspan="6">Regional Taxation Bureau
Okinawa Regional Taxation Office</td><td>Coordination Department</td><td rowspan="6">Tax Offices</td><td>Coordination Division</td></tr>
<tr><td rowspan="2">Taxation Department</td><td rowspan="2">Taxation Department information and Examination Division</td><td>Revenue Management and Collection Division</td></tr>
<tr><td rowspan="2">Collection Department
-Revenue Management Division
-Collection Division</td><td rowspan="2">Collection Department</td><td rowspan="2">Individual Taxes Division</td></tr>
<tr><td rowspan="2">Examination and Criminal Investigation Department
-Examination Division
-Criminal Investigation Division
-Director of International Audit Administration</td><td rowspan="2">Examination Department</td><td rowspan="2">Corporate Taxes Division</td></tr>
<tr><td rowspan="2">Criminal Investigation Department</td></tr>
<tr><td>National Research Institute of Brewing</td></tr>
<tr><td></td><td>National Tax College</td><td colspan="4"></td></tr>
<tr><td></td><td>National Tax Tribunal</td><td colspan="4"></td></tr>
</table>

Figure 1-3: Structure of the Ministy of Home Affairs

Ministry of Home Affairs	Ministry proper	bureaus	Minister's Secretariat	
			Local Administration Bureau	
			Local Finance Bureau	
			Local Tax Bureau	Local Tax Planning Division
				Prefectural Tax Division
				Municipal Tax Division
				Fixed Property Tax Division
		councils, commisions and committees		
		special organs		
		auxiliary organs		
	Affiliated agency	Fire-Defence Agency		

Chapter 2
The Zeirishi[1] System

2.1. Outline

In many countries there are professionals that specialize in tax matters, often certified public accountants or attorneys. Normally, these tax specialists regulate themselves by forming a private association, establishing a set of professional ethics, and restricting membership of the association to persons meeting specified qualification requirements: members then have a monopoly on the use of the professional indicia of the association. However. in a few countries, a profession of tax specialists separate from certified public accountants or attorneys has been set up by legislation. Examples of this type of regulation exist in Japan,[2] the Republic of Korea,[3] Germany[4] and Austria.[5] This type of legislative regulation of taxation specialists goes beyond annexing taxation business to the regular affairs of the certified public accountant or attorney and, by enshrining the contents of the tax specialist's business in legislation, recognises the important role that tax specialists can play in the protection of taxpayers' legal rights and interests.

In the interest of taxpayers who will be represented by tax specialists. tax laws and rules in some countries require specialists to have certain qualifications, although in other countries no special qualifications are necessary for taxation work.[6] In Japan, taxation specialists are regulated by the *Zeirishi* Law, and only persons who operate under the title of '*zeirishi*' may undertake the business of representing taxpayers. Certified public accountants *(konin kaikeishi*) and attorneys (*bengoshi*) are qualified to register as *zeirishi,* but in order to conduct business as *zeirishi* they must actually register and use the title of '*zeirishi*'. Thus. certified public accountants and attorneys may conduct taxation business by virtue of their concurrent qualification as *zeirishi,* not merely as an extension of their business as accountants or attorneys: those who are not *zeirishi* may not conduct tax business and *zeirishi* have a professional monopoly over tax matters.

In Japan, professionals such as attorneys and judicial scriveners (*shiho-shoshi*) are also regulated by legislation. However. attorneys are not supervised by the state: the Bar Associations have absolute autonomy in disciplinary action over attorneys,[7] making them unique among Japanese professional organizations. For other specialists such as *zeirishi* and judicial scriveners, the state continues to play a general supervisory role, but strong arguments have been presented that the *Zeirishi* Associations should have the same autonomy in disciplinary action as the Bar Associations.[8]

2.2. The Legislative History of the *Zeirishi* Law

The forerunner to the *Zeirishi* Law was the *Zeimu Dairishi* (Tax Representatives) Law,[9] enacted in 1942. This was the first legislative system to provide tax representation for taxpayers. The *Zeirishi* Law was enacted in 1951 and has since undergone minor amendments.

Before the enactment of the *Zeimu Dairishi* Law, a small number of specialists, who were registered with the police, provided assistance for taxpayers in tax matters. The

zeirishi system thus has its roots deep in the Meiji Period (1603-1868), as taxation specialists emerged spontaneously in response to public demand. The Japanese Government of the day advanced the policy of *Fukoku Kyohei* (National Wealth and Military Strength), finding revenue for military expansion almost exclusively through tax increases. As the tax burden spread amongst industry and business. so too did the demand for assistance with tax affairs. However, as the number of these tax assistants increased, it became clear that some of them were not competent to adequately respond to taxpayers ' requests, and it became necessary to devise a strategy to address this situation. In 1912, Osaka Prefecture promulgated the *Osaka Zaimu Daibensha Torishimari Kisoku* (Rules to Control Taxation Agents in Osaka), which required those who wished to act as taxation agents to submit documents containing their names, personal histories, *etc*. to the police to obtain a licence.

Later, the outbreak of the Pacific War meant that temporary revenue was required on a large scale, so there were continued amendments to the taxation system to increase the tax yield, to the extent that a new word - *'chozei kosei*' (tax collection offensive) - was coined. In the context of trying to meet the costs of war, the Government introduced the *Zeimu Dairish*i Law in 1942 to create a buffer zone between taxpayers and the authorities. During the passage of this legislation through the Diet, the Government representative commented :

> it is desired that tax representatives will consider themselves an ancillary arm of the taxation authorities and will contribute to the diffusion of a spirit of willing tax payment amongst the populace.[10]

Thus, in return for the legal recognition of the profession of tax representatives, they were allotted the role of subsidiary tax collection contractors for the Government.

In August 1945, with the acceptance of the Potsdam Declaration and end of the War, the new Constitution was put in place and there was rapid democratization in political, economic and social fields. In the Shoup Second Report on Japanese Taxation of September 1950, there was an emphasis on raising the standard of tax representation:

> An efficient tax system requires the presence of professional groups competent to represent the taxpayer before the administrative officials. Such representation affords a necessary protection for the individual taxpayer against administrative error in his particular case. But in addition it serves as an overall check on administrative operation, since the professional groups are capable of informed criticism of the administrative system. The result is a constant and needed spur to increased administrative efficiency and fairness of decision. It is very important to the success of tax administration in Japan that the number and quality of taxpayer representatives be steadily increased.[11]

It was in response to the Shoup Report that the *Zeimu Dairishi* Law was repealed in March 1951 and replaced with the *Zeirishi* Law.

The title of tax specialists was changed to *'zeirishi*', and by introducing a system of examinations the objectives were to improve the quality of tax specialists and, in response to the trust of taxpayers, to aim for a proper tax mix and an appropriate system of self-assessed tax. Having said this, very few of the progressive aspects of the Shoup

Report which tended to protect the rights of the taxpayer were adopted, with the exception of the public examination system.[12] If anything, onerous provisions on *zeirishi* were increased, as were supervisory powers for the relevant authorities.[13]

2.3. What is a *Zeirishi*?

2.3.1. The Mission of *Zeirishi*

The mission of *zeirishi* is described in Article 1 of the *Zeirishi* Law (1980 amendment).

> As an expert in taxation matters, a zeirishi shall endeavour, from an independent and impartial position and in accordance with the principle of self-assessment of taxes, to realize a proper compliance with tax laws and ordinances in response to the trust placed in him or her by taxpayers.

This legislative statement has been interpreted in the following ways.

> The aim of the state in establishing a system of *zeirishi* is to ensure that those who represent taxpayers in tax affairs have the appropriate personal characteristics and knowledge to fulfil that duty. and that in responding to the trust of taxpayers they contribute to the smooth and fair operation of the self-assessed system of taxation by promoting the correct performance of tax paying duties as set out in legistation.[14]

> The particular duty of *zeirishi* when carrying out the business entrusted to them by taxpayers is to maintain an independent and impartial position. Furthermore, it goes without saying that, as is the normal attribute of any professional, *zeirishi* must retain their impartial judgement and good sense based on their own personal convictions.[15]

The meaning of 'an independent and impartial position' comes into question when the views of the tax authorities and the taxpayer differ as to the interpretation of an aspect of tax law or as to the facts of the case. According to one view, a *zeirishi* maintains an impartial position by endeavouring to realize an appropriate compliance with taxpaying duties through protecting the taxpayer's rights and correctly promoting the taxpayer's interests. This interpretation of impartiality views tax law not from the side of the taxing authorities but from the side of the taxpayer and the protection of fundamental rights, so that in carrying out a tax practice the *zeirishi* has more the features of a tax *lawyer* than a tax *accountant*. There has been criticism that by stressing the impartial aspect of the *zeirishi*'s professional duty rather than active advocacy on behalf of the taxpayer, full realization of the rights and interests of the taxpayer becomes impossible.[16] In response to this criticism, the Tokyo *Zeirishi* Association has proposed to the Japan Federation of Zeirishi Associations that Article I of the *Zeirishi* Law be amended to include the additional words:

> ... In accordance with the principle of self-assessment of taxes, a *zeirishi* shall not only protect the rights and interests of the taxpayer, but also strive for the improvement of the taxation system as a whole.[17]

2.3.2. The Practice of *Zeirishi*

In the course of their practice, *zeirishi* carry out the duties listed below at the request of clients, and of these, (1), (2) and (3) are reserved exclusively for *zeirishi*.[18] The reservation extends to every commission of such acts, and is not restricted to work conducted for remuneration: *zeirishi* have an absolute monopoly over areas that are within their allotted practice. However, expositions on the general content of tax law that do not venture into analysis of specific fact situations (for instance, public lectures or question-and-answer sessions) are outside the boundaries of the *zeirishi*'s monopoly. Where a person who is not a registered *zeirishi* conducts restricted acts, he or she will be subject to penal servitude of less than two years or a fine of less than ¥300,000.[19] However, the absolute monopoly of *zeirishi* is being threatened by the free taxation advice offered by financial organizations and real estate companies as an incident of their regular business.

(1) Tax Agency

Tax agency includes:[20]

(a) acting as agent in relation to returns and other documents submitted to tax authorities;
(b) acting as agent or deputy in making claims or statements to tax authorities in relation to those documents; and
(c) acting as agent or deputy in making claims or statements in response to audits or dispositions of tax authorities.

(2) *Drafting of Tax Documents*

Drafting of tax documents refers to the preparation of documents that comprise and accompany tax returns and other documents submitted to tax offices.[21] ‘Tax documents' include returns for corporations tax, applications to submit blue returns and applications for administrative review. However, financial statements such as corporate balance sheets, even where they are required as attachments to returns, are not 'tax documents' for these purposes.

(3) *Tax Consultation*

Tax consultation refers to consultation as to the calculation basis for taxes in anticipation of submitting returns. claims or statements to tax authorities or of drafting of tax documents.[22] The *zeirishi* conducts a consultation by answering specific questions, giving directions and expressing opinions. Activities such as general interpretation of tax laws or hypothetical calculations for training purposes do not count as 'tax consultation'.

(4) Supplementary Practice

In addition to the above. *zeirishi* may, as part of their business as *zeirishi*, carry out supplementary matters at the request of clients, such as drafting of financial documents, keeping accounting ledgers or other matters relating to financial affairs.[23] These matters, unlike (1) to (3) above, do not fall within the *zeirishi*'s monopoly. *Zeirishi* are permitted

this supplementary practice because calculation of a taxpayer's tax liability can be conducted only after gaining a basic understanding of the accounting and management practices of a business: tax and accounting are inextricably entwined. The *Zeirishi* Law merely confirms this inseparable relationship by allowing provision of supplementary accounting services to a taxpayer who entrusts a *zeirishi* with his or her tax affairs.

Note. however. that the auditing and attestation of financial documents are reserved exclusively for certified public accountants. *Zeirishi* may not conduct this business.

2.3.3. Qualifying to Become a *Zeirishi*

The following may register as *zeirishi*:

(a) those who have passed the *Zeirishi* Examination;
(b) persons exempted from sitting the *Zeirishi* Examination;
(c) registered attorneys and those qualified to register as attorneys; and
(d) registered certified public accountants and those qualified to register as certified public accountants.

In order to practise as *zeirishi,* such persons must be accepted for registration on the Roll of *Zeirishi* maintained by the Japan Federation of *Zeirishi* Associations (JFZA) and must also obtain membership of their regional *zeirishi* association. Other persons are excluded from conducting a practice as a zeirishi.[24] The functions of *zeirishi* associations are to guide and supervise members and provide a contact network. In order to fulfil these functions successfully, membership has been made compulsory.

Foreigners must satisfy the same criteria as Japanese nationals to become *zeirishi.* Foreign-law attorneys (*gaikoku-ho .jimu-bengoshi*)[25] are not regular attorneys,[26] so they do not qualify to become zeirishi under (c) above.[27]

However, where a foreign qualified accountant receives the recognition of the Minister of Finance and is accepted for registration on the Roll of Foreign Certified Public Accountants maintained by the Japan Association of Certified Public Accountants, he or she may conduct the practice of a (Japanese) certified public accountant.[28] Such a foreign accountant is regarded as a (Japanese) certified public accountant for the purposes of the application of the *Zeirishi* Law.[29]

2.3.4. The Zeirishi Examination

The *Zeirishi* Examination[30] was instituted to determine whether candidates have the academic aptitude and practical knowledge to become *zeirishi.* Candidates sit examinations in three tax law subjects out of Income Tax Law, Corporations Tax Law. Inheritance Tax Law, Consumption Tax Law, *etc.* It is compulsory to take either Income Tax Law or Corporations Tax Law (or both). Candidates must also sit two accounting subjects, namely Bookkeeping and Financial Statements.[31]

However, persons who satisfy certain criteria, such as those who have worked as national tax officials for more than 15 years and those who hold postgraduate degrees in law and/or accounting, are wholly or partially exempted from sitting the examinations. The Tokyo *Zeirishi* Association is of the view that this exemptions system creates

inconsistencies in the attainment of qualifications, and has suggested to the Japan Federation of *Zeirishi* Associations that those who currently qualify for exemption be required to sit at least one of the examinations outlined above, rather than have a total exemption.[32]

In relation to foreign candidates for the *Zeirishi* Examination, they are in exactly the same position as Japanese candidates. The *Zeirishi* Examinations are designed to test the knowledge of domestic tax law and its application, so the examinations are conducted in Japanese, and not in English or any other foreign language.

2.3.5. Limits on the Practice of *Zeirishi*

In terms of limitations on practice as a *zeirishi*, a former public servant is prohibited from taking undue advantage of his or her prior position in conducting business as a *zeirishi*. The *Zeirishi* Law states:

> In the case of a *zeirishi* who was formerly an official of a national or local public body administering national or local taxes, for one year after retirement from the public service position he or she shall not practise as a *zeirishi* in relation to cases with which his or her position was connected in the final year of public service.[33]

The limitation in this provision relates only to the final year of public service, so some doubts have been raised as to its effectiveness. The Tokyo *Zeirishi* Association has submitted to the Japan Federation of *Zeirishi* Associations a recommendation that. for three years after leaving the public service, a public servant who handled national or local tax matters must report to his or her regional *zeirishi* association a list of all persons that he or she advised and all the matters on which advice was given to those persons.[34]

2.3.6. Supervision of *Zeirishi*

Currently, disciplinary power over *zeirishi* lies with the Minister of Finance.[35]

Based on the ideal that a *zeirishi* should endeavour to realize a proper compliance with taxation laws as the *taxpayer's representative,* it is necessary that *zeirishi* should make every effort to establish their own autonomy and restrain public regulation of the profession by administrative authorities. For *zeirishi* to be able to fulfil their mission, it is imperative that the *zeirishi* associations (as the collective body of *zeirishi*) and the relevant tax authorities be on an equal footing. While the *Zeirishi* Law continues in its current form, by which individual *zeirishi* and the *zeirishi* associations alike must submit to close scrutiny by a supervisory administrative authority, the system of *zeirishi* cannot be expected to flourish.

Another consideration is that attorneys are not supervised by an administrative authority, with disciplinary power over attorneys being held by the bar associations. The Tokyo Zeirishi Association has proposed a revision of the disciplinary system for *zeirishi*. so that disciplinary action will be entrusted to the zeirishi associations or the JFZA.36

2.3.7. The Structure of the Japan Federation of *Zeirishi* Associations (JFZA)

The *Nihon Zeirisikai Rengokai* (Japan Federation of *Zeirishi* Associations or JFZA)[37] is a special juridical person created under the provisions of the *Zeirishi* Law. The JFZA is made up of 14 regional *zeirishi* associations (tan 'i zeirishikai), one of which exists in each of the geographical jurisdictions of the Regional Tax Bureaus. *Zeirishi* in each jurisdictional area are affiliated with their regional *zeirishi* association,[38] not the JFZA directly. For this reason. individual *zeirishi* have no legal right whatsoever to participate in General Meetings and other functions of the JFZA. The Tokyo *Zeirishi* Association has proposed that the Federation be restructured into a Japan *zeirishi* Federation, so that the Federation would be constituted of individual *Zeirishi*, rather than the 14 regional *zeirishi* associations.[39]

The structure of the JFZA consists of:

(a) one President (normally selected from among the presidents of the 14 regional associations);
(b) up to 14 Vice-Presidents (from amongst the presidents of the regional associations);
(c) 100 Directors; and
(d) 14 Auditors.

These officers are elected at the General Meeting and serve two-year terms. The President. Vice-President and the Managing Directors manage the affairs of the JFZA. The General Meeting is made up of the 14 presidents of the regional zeirishi associations, from whom one is elected as Chair of the General Meeting. The functions of the General Meeting are to produce the annual report, balance the accounts, plan the JFZA's business, determine budgets, and decide on revisions of JFZA Rules and Regulations.[40]

Currently the organizational management of the JFZA is conducted by the I 4 presidents of regional associations in their elected positions as President or Vice-Presidents. They perform the business of the JFZA. The same personnel who make submissions and vote at the General Meeting then administer the decisions: the General Meeting, as the legislative arm of the organization, should have the function of maintaining a check on the administration of the executive arm, but since the legislative and executive arms consist of the same personnel this is not really possible. The opinion has been put forward that, in order to ensure fairness in the performance of such business, the General Meeting should be reconstituted to be more representative of all zeirishi.[41]

2.3.8. Activities of the JFZA

The public activities of the JFZA can be summarized as follows.

(a) Each year. the JFZA makes suggestions and requests to the government and the political parties concerning the tax system and its administration.
(b) For taxpayers who find it financially non-viable to retain a *zeirishi*, the JFZA sets up taxation advice centres, sends *zeirishi* on secondment at the request of various organizations and conducts consultations when final tax returns are due.
(c) With the aim of consolidating the system of self-assessed taxation, the JFZA

provides assistance to white return filers in filling in the relevant documents.

(d) Each year the JFZA selects a publication from among the books and articles published that year on the tax system, tax administration or the *zeirishi* system, to be presented with an Award from the Japan Tax Research Institute.

(e) The JFZA has established the Asia-Oceania Tax Consultants' Association, which aims to promote friendly relations and the sharing of information between tax consultant groups in the Asia-Oceania region. The JFZA also fosters exchange with the Confederation Fiscale Europeenne (CFE).

2.3.9. Other Professional Bodies for *Zeirishi*

Zeirishi also participate in activities in the public interest outside the boundaries of the statutory *zeirishi* associations.

(a) The *zeirishi* Political League (*Zeirishi Seiji Renmei*) undertakes political activity to promote the social and economic standing of *zeirishi* and to ensure the democratic operation of the tax system, tax administration and the *zeirishi* system for the benefit of taxpayers.

(b) The Volunteer Association of the JFZA (*Nichizeiren Ai no Borantia-kai*) provides financial aid to volunteer activities both within Japan and abroad.

(c) The Japan Women's *Zeirishi* Society (*Zenkoku Fujin Zeirishi Renmei*) is active in promoting the standing of women and female *zeirishi* in Japan. Its activities have received attention from all sectors in recent years.

(d) The Japan Federation of Young *Zeirishi* Associations (*Zenkoku Seinen Zeirishi Renmei*) encourages reform of the tax system and the tax administration system with the aim of protecting taxpayers' rights. Based on observation of tax systems in the United States and the European Union. the group draws attention to underdeveloped aspects of tax and tax administration in Japan.

(e) The TKC Computer Users' Council (*TKC no Konpyuta Yuza Kyogikai*) performs such social functions as communicating proposals for reform of the tax system to the Minister of Finance and other Diet members.

(f) The National Tax and Economics Novices Council (*Zeikei Shinjinkai Zenkoku Kyogikai*) aims to protect taxpayers ' rights through constitutional means, beginning with the adoption of a Charter of Taxpayers' Rights.

2.4. The *Zeirishi*'s Power of Agency

2.4.1. The Commission Contract between Taxpayer and *Zeirishi*

When submitting a return or other tax document to a tax authority and conducting ancillary procedures, it is common for a taxpayer to retain a tax specialist. This situation amounts to the creation of a commission contract.

In response to the instructions of the client, the *zeirishi* conducts tax agency and consultation, drafts tax documents or financial documents, prepares accounting ledgers

and carries out other financial affairs. Which of these the taxpayer entrusts to the *zeirishi* depends on the circumstances of the specific contract, but the most common forms of contract can be isolated as the 'contract for individual acts', for instance for attendance at an audit or to apply for administrative review, and the 'general advisory contract', which is for all services that the *zeirishi* is legally able to provide.[42]

In relation to the 'individual acts' in a contract for individual acts, each return, application, claim or application for administrative review under Article 2(1)(i) of the *Zeirishi* Law is counted as a separate act of agency. For instance, when a *zeirishi* is retained by a taxpayer to file a final return for income tax and at the same time files an application for approval to submit a blue return, the income tax return and the blue return application comprise two separate tax agency matters so it is necessary to create a second commission contract for the blue return application.

Commission contracts from businesses tend to take the form of general advisory contracts, since businesses have continuing and wideranging economic activities. If businesses engaged *zeirishi* for tax agency on an issue-by-issue basis, time and effort would be taken up in grasping the economic circumstances of each client, there would be a higher risk of error, and the whole arrangement would not be economically rational. Continuing and comprehensive general advisory contracts make better sense in this situation.

2.4.2. The Nature of the Commission Contract

In a contract for individual acts the taxpayer requests the *zeirishi* to undertake certain taxation business and the *zeirishi* accepts this request, so the contract can be characterized as a mandate.[43] In a general advisory contract, the offer of services by the *zeirishi* is continuing so that he or she has no choice whether to take on particular requests from the client or not, so the contract can be characterized as a mandate or a mixed type contract which includes elements of the mandate.[44]

As the commission contract between taxpayer and *zeirishi* has the nature of a mandate, the *zeirishi* (as mandatary) must dispose of the affairs of the taxpayer (mandator) with 'the care of a good manager' in accordance with the tenor of the mandate.[45] The standard of care in this case is that of a specialist, and is thus of a higher standard than that of a member of the general public.

In relation to the termination of a mandate, either party can rescind the contract at any time.[46] As between the parties, the rescission is effective immediately, but in relation to third parties (such as the tax authorities), termination of the mandate cannot be used as grounds against them unless they are given notice or are otherwise aware of the termination.[47] Where the economic interests of the mandatary (i.e. the *zeirishi*) are affected by the termination, damages may be claimable to recover this loss.[48] However, general advisory contracts are premised on being continuing contracts, and there is the view that termination requires a breakdown in the relationship of trust between the parties and notification of the reasons for termination.[49]

2.4.3. Evidence of the Power of Agency

When a *zeirishi* conducts tax agency, he or she must submit a document to the tax authorities evidencing the power to do so.[50] As a rule, this document should be

submitted when agency is first undertaken. In many cases, the document is submitted as an attachment to a return, application, etc. However, in special circumstances, there will be no objection as long as the document is submitted by the time the act of agency or representation is completed. Even if the evidentiary document is not submitted, the acts of agency or representation are not invalid, and the zeirishi cannot escape the obligations of the contract by failing to submit the document.[51]

In relation to the withdrawal of an application for administrative review or a sub-delegation of power, there must be a special delegation of power.[52] The withdrawal of an application for administrative review to seek redress against a disposition by a tax authority has a profound effect on the interests of the taxpayer, so a specific delegation is required to verify the will of the taxpayer. In relation to sub-delegation, i. e. delegation of power by the commissioned *zeirishi* to another, it could be problematic if the principal became liable for acts of an unknown third party, so special approval of the principal must be obtained. Note that if the sub-delegated activities are within the zeirishi's monopoly, then the sub-deputy must also be a zeirishi.[53]

2.5. The Responsibility of *Zeirishi*

2.5.1. Elements for Establishing Civil Responsibility

The commission contract between a taxpayer and *zeirishi* is a mandate, so the *zeirishi* (mandatary) must conduct the affairs of the mandator with 'the care of a good manager' in accordance with the purpose of the mandate. Where the *zeirishi* does not perform the business in accordance with the tenor of the contract and performance is delayed or becomes impossible, he or she may be liable for non-performance of obligation if the following elements are established.

(1) *Loss*

It is necessary to establish that. when the *zeirishi* was executing his or her business, a direct loss to the taxpayer was caused through the neglect of the *zeirishi*. An example would be where a *zeirishi* fails to submit a Selection of Simplified Tax System Notice in relation to a small/medium enterprise's consumption tax and is not able to take emergency rectification measures by seeking correction, with the result that the client suffers the damage of having to pay an additional amount of consumption tax. Where too much tax is initially paid due to a calculation or interpretation error by the *zeirishi* but the excess can be retrieved, it cannot be said that any direct loss has been suffered.

(2) *An Act Attributable to the Responsibilty of the Zeinshi*

There must exist a link connecting responsibility for the loss to the *zeirishi*'s actions. such as an intentional act, negligence or some other equivalent breach of faith on the part of the obligor.[54] Intentional acts are deliberate action or inaction committed with the knowledge that they will lead to non-performance of the obligation. Negligence refers to failing to recognise acts leading to non-performance, through the absence of caution generally demanded from persons of the same profession or social/economic position.[55] In terms of breaches of faith other than intentional or negligent acts, an example would be intentional or negligent acts by an associate. In such a situation, the *zeirishi* must bear the responsibility as obligor, but the responsibility does not extend to

the acts themselves. Thus, where an associate steals the client's money or valuables, the *zeirishi* bears responsibility for damages, but the associate bears responsibility for the acts themselves,*i.e.* criminal responsibility. [56]

The burden of proof in relation to causation lies with the obligor (the *zeirishi*). Unless the *zeirishi* can prove lack of causation, he or she will be liable.[57]

(3) *Unlawfulness*

Even if the other elements of non-performance are found, there is no breach if there is a legal reason for the acts of the *zeirishi*. Legal reasons include a lien held by the obligor or the defence of simultaneous performance,[58] but it is hard to think of a situation in a *zeirishi*'s practice where these would arise. For instance, it is not possible to claim the defence of simultaneous performance merely because remuneration on the mandate (for which post-payment is the norm) has not been paid.[59]

2.5.2. The Scope of Damages

(1) *Appropriate Causal Relationship*

There must be a causal relationship between the loss suffered by the client and the acts of the *zeirishi*. The boundaries of this causal relationship are defined - the *zeirishi* is only liable for the effects that could normally be foreseen from his or her acts.

(2) *Contributory Negligence*

In order to carry out the business of a *zeirishi*, it is necessary to have the cooperation of the client in providing information and materials. Where such cooperation is inadequate, it is unreasonable to expect the *zeirishi* to bear the full burden of any damage. For this reason, it may be necessary to reduce the *zeirishi*'s responsibility for damages in consideration of any negligence by the client.

2.5.3. Insurance

Zeirishi's Damages Insurance provides security in relation to damages payments required of *zeirishi* in the course of their business. However, contribution to this insurance system is not compulsory so the scale of the insurance is small.

One problem with the insurance system is the wide scope of exemptions. In particular, damages arising in relation to incidental taxes such as penalty taxes are not covered by the insurance, so the *zeirishi* will have to pay these to the taxpayer out of his or her own pocket. Also not covered by the insurance are situations where the tax return was not submitted in time , or an amount of tax was not paid within the provided period or too little was paid, and a revised return, correction or determination leads to an additional payment .

For this reason, the recovery of damages under this insurance system is usually restricted to cases arising out of over-calculation of tax debts in returns.[60]

1 *Zeirishi* is variously rendered as 'tax attorney', 'certified tax accountant' or 'certified public tax accountant', but there is no firmly established English equivalent. It is left in the original for most purposes here. Note that *zeirishi* can be either singular or plural.

2 Certified Tax Accountants Law (or '*Zeirishi* Law') [*Zeirishi Ho*] (Law No. 237 of 1951).

3 *Semusa Po* [Tax Agents Law] (Law No. 7 1 2 of 1961). As at October 1992 there were 2,653 tax agents in the Republic of Korea.

4 *Steuerberatungsgesetz* [Tax Advisers Law] (BGB1 1961 I.1301). As at January 1993 there were 54,679 tax advisers in Germany.

5 *Wirtshaftstreuhander-Berufsordnung* [Independent Accountants' Professional Law] (Law No. 26 of 1965).

6 In the United States of America, for instance, qualifications are required to represent taxpayers before the Internal Revenue Service (IRS). The regulations governing tax agents are set out in Treasury Department Circular No. 230, Subpart A - Rules Governing Authority to Practise.

7 Attomeys Law [*Bengoshi Ho*] (Law No. 205 of 1949) Chapters 7 to 10.

8 Tokyo *Zeirishi* Association [Tokyo Zeirishikai], *Prospectus for Amendment of the Zeirishi Law* [Zeirishi Ho Kaisei Yoko] (1993), at 14. For the position under the *Zeirishi* Law, see Japan Federation of *Zeirishi* Associations (JFZA) [Nihon Zeirishikai Rengokai], *Article-by-Article Interpretation of the Zeirishi Law - New Revised Edition* [Zeirishi Ho Chikujo Kaisetsu Shinteiban] (1991).

9 Tax Representatives Law [*Zeimu Dairishi Ho*] (Law No. 46 of 1942).

10 See Japan Federation of *Zeirishi* Associations (JFZA) [Ninon Zeirishikai Rengokai] (ed.), Historical Development of the *Zeirishi System* [Zeirishi Seido Enkakushi] (I 969), at 41.

11 Shoup Mission, *Second Report on Japanese Taxation* (1950) Part C, Chapter 4 -Taxpayers' Representatives.

12 *Zeimu dairishi* under the old system were appointed on the approval of the Minister of Finance. not according to examination results.

13 Tokyo *Zeirishi* Association, supra n.8, at 14.

14 JFZA, supra n.8, at 8.

15 *Ibid* .

16 Kitano, Hirohisa. Principles of Tax Law <Third Edition> [Zeihogaku Genron <Daisanpan>] (1992), at 386 ff.

17 Tokyo *Zeirishi* Association, *supra* n.8, at 14.

18 *Zeirishi* Law Article 2.

19 *Zeirishi* Law Articles 52 and 59.

20 *Zeirishi* Law Article 2(1)(i).

21 Zeirishi Law Article 2(1)(ii).

22 Zeirishi Law Article 2(1)(iii).

23 Zeirishi Law Article 2(2).

24 *Zeirishi* Law Article 3.

25 Special Measures Law Relating to the Legal Practice of Foreign Lawyers [*Gaikoku Bengoshi ni yoru Ho^ritsu Jimu no Toriatsukai hi Kansuru Tokubetsu Sochi Ho*] (Law No. 66 of 1986).

26 Attorneys Law Articles 4 and 5 .

27 *Zeirishi* Law Article 3.

28 Certified Public Accountants Law [*Konin Kaikeishi Ho*] (Law No.103 of 1948).

29 *Zeirishi* Law Article 3(2).

30 *Zeirishi* Law Article 6.

31 According to a 1984 report by the Japan Federation of *Zeirishi* Associations (JFZA) on the actual state of *zeirishi* practice, qualifications were acquired by the following means:
(a) *Zeirishi* Examination (41.80%);
(b) Special *Zeirish*i Examination (39.9%);
(c) certified public accountants (4.0%); and
(d) others (14.3%).
Note that under the partial amendment to the *Zeirishi* Law in 1980, the Special *Zeirishi* Examination (for former tax officials) was dropped in favour of the exemptions system, whereby candidates spend a period as trainees, depending on their length of service in the tax office, in lieu of examinations. See generally JFZA Institutions Department [Ninon Zeirishikai Rengokai Seidobu], *Third Report on Actual State of Zeirishi* [Daisankai Zeirishi Jittai Chosa Hokokusho] (1984). In 1994, the number of candidates for the *Zeirishi* Examination was 49,093: there were 970 who passed one or more subjects, but only three who passed all five subjects. It can be concluded that the examination is extremely competitive.

32 Tokyo *Zeirishi* Association, *supra* n.8, at 59. Particularly, the increasing use of the postgraduate degree mode of entry to the profession has disturbed current *zeirishi* - it is seen as a kind of loophole. The proposal is that all those who are exempted from examinations under the current *Zeirishi* Law (including attorneys, certified public accountants, holders of postgraduate degrees, *etc.*) should be required to sit at least one examination.

33 *Zeirishi* Law Article 42.

34 Tokyo *zeirishi* Association, supra n.8, at 64: "At the time of the 1980 amendment to the *Zeirishi* Law, the mass media took up the issue of retired upper-level tax officials becoming *zeirishi* and the system was criticised by various sectors of the community."

35 *Zeirishi* Law Articles 44 to 48.

36 Tokyo *Zeirishi* Association, supra n.8, at 48.

37 *Zeirishi* Law Article 49.

38 As at July 1993, there were 59,957 *zeirishi* registered with the regional *zeirishi* associations throughout Japan.

39 Tokyo *Zeirishi* Association, supra n.8, at 55.

40 Having regard to the grave defects that the management of the JFZA and the *zeirishi* associations can have on tax administration, the Minister of Finance has the power to revoke decisions of the General Meeting or to dismiss officers for breach of law or association rules or for activities detrimental to the public interest: *Zeirishi* Law Article 49-16. The Minister of Finance supervises the JFZA and the *zeirishi* associations through *Zeirishi* Supervision Officers at the National Tax Administration, who exercise general supervisory power by collecting reports, etc. under Article 49-17 of the *Zeirishi* Law.

41 Kitano, *supra* n.16, at 394 ff.

42 Kobayashi, Hiroshi, *The Rights and Responsibilities of Zeir*ishi [Zeinshi no Kenri to Gimu] (1993), at 72.

43 Civil Code [*Minpo*] (Law No. 89 of 1898) Article 643. There are thirteen 'named' (or 'nominate') types of contract, of which mandate is one, within the Civil Code and nine further nominate types in the Commercial Code [*Shoho*] (Law No. 48 of 1901). Where a contract can be classified as one of the nominate types, the specific provisions governing that type will apply to the contract in addition to the general provisions which apply to all contracts. Contracts that do not fall within one type may be classified as mixed contracts, in which case the specific provisions governing the relevant types may apply by analogy, as appropriate.

44 *Kobayashi v. Johoku Tairu Co.* (Supreme Court, September 20, 1983) *1100 Hanrei Jiho 56; Kono v. Echigo Sangyo Co.* (Tokyo High Court, May 3 1 , 1980) 1279 *Hanrei Jiho* 19; Toba Kogyosho Co. v. Yoshida and Watanabe (Gifu District Court (Ogaki Division), November 28, 1986) 1243 *Hanrei Jiho* 113.

45 Civil Code Article 644.

46 Civil Code Article 65 l(1).

47 Civil Code Article 655.

48 Article 651(2) of the Civil Code specifies criteria for payment of damages upon rescission. However, the view has been put that the article refers only to mandates without remuneration so that in strict terms it does not apply as the basis for damages in the termination of a *zeirishi*'s mandate. See Hironaka, Toshio, 'Mandate and Dissolution', in Matsuzaka, Saichi et al. (eds), 4 *Treatise on Contract Law* [Keiyakuho Taikei] (1971) 294.

49 Tokyo *Zeirishi* Association [Tokyo Zeirishikai], *Research on Zeirishi's Advisory Contracts* [Zeinshi Komon Keiyaku no Kenkyu] (1979), at 24.

50 *Zeirishi* Law Article 30.

51 JFZA, *supra* n.8, at 76 ff

52 *Zeirishi* Law Article 31 .

53 No qualifications are required to represent another in administrative review procedures (unlike in litigation) unless the representation includes matters within the *zeirishi* monopoly set out in Article 2 of the *Zeirishi* Law.

54 Shudo, Shigeyuki, 'The Responsibilities of *Zeirishi*' (1993) 24 *Nichizei Ronshu* [Journal of the Japan Tax Research Institute] 127.

55 This is known as the duty of good management. *Zeirishi* are specialists in tax law, so a high standard to care is demanded from them, but the levels of breach of the standard can be based on a holistic consideration of the following factors:

(a) whether the mandate is for continuous and repeated work or for an individual matter;
(b) the period of time between the creation of the mandate and the due date for submission of the return;
(c) the degree of preparation of evidence and materials relating to the facts of the tax matter;
(d) the situs of the property (real estate, etc.) which constitutes the subject matter of the case, and the degree of geographical dispersion of the main office, branch offices, other locations, etc. of the taxpayer's business;
(e) the capacity of the mandator to explain the facts of the case and the degree of cooperation from the mandator; and
(f) the degree of knowledge by the *zeirishi* of precedents and scholarly opinions on the interpretation of the applicable laws and rules and the *zeirishi*'s level of practical experience.

See Sato, Yoshiyuki, 'The Professional Standard of Good Management and Responsibility for Damages' (1990) 33(8) *Zeiri* [Tax Management] 43.

56 Under Article 715 of the Civil Code, an employer is vicariously liable for illegal acts by an employee in the course of employment causing damage to a third party. The employer is in effect not exempted even if he or she has exercised considerable caution in hiring and supervising the employee (Proviso in Article 715(1)), a situation approaching strict liability: *Kono v. Commissioner of the National Tax Administration* (Tokyo High Court, September 5, 1978) 913 Hanrei Jiho 82.

57 Shudo, *supra* n. 54, at 128.

58 Civil Code Article 533 provides that one party to a bilateral contract may refuse performance of his or her own obligation until the other party tenders performance, provided that performance by the other party is already due.

59 Shudo, supra n. 54, at 129.

60 penalty taxes and delinquency taxes underpin the Japanese self-assessed tax system, so systemic problems would result if these could be claimed on the *zeirishi*'s insurance. They are therefore exempted from claims. See Ishida, Mitsuru, 'Issues Concerning Damages and the Scope of *Zeirishi*'s Responsibility' (1988) 31 (5) *Zeiri* [Tax Management] 9.

Chapter 3

Assessment Procedures (*Kakutei Tetsuzuki*)

3.1. Modes of Assessment

In the Japanese tax system, there are three modes of assessing the amount of a taxpayer's tax debt.

(1) Self-assessment (shinkoku nozei) occurs when the taxpayer files his or her tax return: but if no tax return is filed, or if the taxpayer's calculations do not follow tax laws, or if an audit by the tax authorities reveals some other discrepancy, then assessment occurs through the acts of the tax authority.[1] Self-assessment is the basic mode of assessment for national taxes, and is adopted in the main substantive tax laws such as the Income Tax Law, the Corporation Tax Law and the Inheritance Tax Law.

(2) Administrative assessment (*fuka kazei*) is exceptional for national taxes,[2] but is the norm for local taxes.[3] In this case, the amount of the tax debt is assessed solely through acts of the relevant tax authority.[4]

(3) Automatic assessment (*Jido kakutei*) occurs where the amount of the tax liability is assessed automatically as soon as the obligation to pay tax arises.[5] This mode of assessment is used for provisional payments on income tax, national taxes subject to a withholding tax, securities transaction tax paid with duty stamps, automobile tonnage tax, stamp taxes paid with duty stamps, and registration and licence tax. According to the various substantive laws governing these taxes, no special assessment procedures are necessary because the calculation of the amount of tax owed is so simple.[6]

3.2. Outline of the Self-Assessment System

The self-assessment system of tax payment is the system whereby taxpayers themselves assess the amount of tax that they owe and then voluntarily pay that amount.

The taxpayer calculates the amount of tax that he or she owes based on substantive tax laws and files a return containing this information to the tax authorities.[7] The assessment has the legal effect of creating an obligation on the part of the taxpayer to voluntarily pay the relevant amount.

Secondary assessment by the tax authorities can occur through determination [8] where the taxpayer does not submit a return in accordance with the procedures set out by law or through correction and recorrection[9] where the calculation of the amount owing is incorrect in the light of substantive tax law. If the obligation of voluntary payment is not met within the appointed period then procedures for compulsory collection can commence. [10]

However, the fact is that most salaried workers in Japan have little contact with the self-assessment system due to the combined effects of witnholding tax and the year-end adjustments system.[11]

3.3. Revised Returns (*Shusei Shinkoku*)

If the taxpayer notices that the amount calculated on a tax return, correction or determination is too low, he or she may amend the error in a revised return.[12] A revision can occur at any time: there is no deadline as with a claim for correction. Revision generally occurs by the voluntary act of the taxpayer, but there are some provisions which oblige the taxpayer to submit a revised return.[13] The submission of a revised return does not affect the obligation to pay a previously assessed tax debt.[14] Although revision is left to the discretion of the taxpayer, when a revised return is filed with the knowledge that an audit of the original return by the tax authorities would result in a correction disposition, the taxpayer may be subject to penalty taxes,[15]

3.4. Claim for Correction (*Kosei no Seikyu*)

Where the taxpayer notices that the amount calculated on the tax return was too great, he or she may seek a correction by the Director of the Tax Office to reduce the amount, but only within one year of the statutory deadline for filing the return.[16] The Director conducts an audit: where the claim is found justified the correction will be made and where it is not accepted the taxpayer will be notified as such,[17]

The time limit for making a claim is not overly generous to the taxpayer, and in some cases it would be improper to apply it mechanically. The law therefore provides that where an assessment is the subject of a dispute and a subsequent court judgment or a conciliation adjudicates on the taxable base or factual basis upon which the calculation in the original return or correction or determination was made, then a claim for correction may be made up to two months from the day after that adjudication,[18] Individual tax laws such as the Income Tax Law also have important provisions allowing a claim for correction based on events after the expiry of the time limit.[19]

3.5. Correction (*Kosei*) and Determination (*Kettei*)

Where the Director of the Tax Office finds that the contents of a taxpayer's return are contrary to law or are contradicted by an audit, he or she may correct the contents of the return.[20] This process of correction can be divided into cases where the tax amount is increased and those where it is reduced. Furthermore, the Director can conduct an audit to assess the amount of a tax debt where the taxpayer has not complied with the obligation to file a tax return:[21] this is referred to as a determination.

After there has been a correction or determination, there can be a further correction if the amount determined is too large or small.[22] Such recorrections can occur any number of times up to the statutory filing deadline.

Corrections and determinations are effected through the sending of a Notification of Correction or a Notification of Determination. It is usually not necessary to attach reasons to such a notification, except in the case of blue returns.[23]

3.6. Blue Return Filers and White Return Filers

Tax returns can be white (regular) or blue. Blue returns may be filed for income tax on income from real estate, business or forestry, or for corporate tax, with the approval of the Director of the Tax Office.[24]

The system of blue returns provides many advantages for those who have kept accurate records of their transactions. Inductive calculations of tax are not permitted for blue return filers, and correction can only occur when an audit reveals an error in the records submitted with the return.

Furthermore, there is a requirement to attach reasons to a Notification of Correction for blue returns. Failure to attach reasons is in itself enough to invalidate the correction for blue returns:[25] this is not the case for white returns.[26]

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1 National Taxes Common Provisions Law [*Kokuzei Tsusoku Ho*] (Law No. 66 of 1962) Article 16(1)(i).

2 Consumption Tax Law [*Shohizei Ho*] (Law No. 108 of 1988) Articles 4(5), 47(2) and 50(2); Customs and Tariffs Law [*Kanzei Ho*] (Law No. 61 of 1954) Article 6-2(1)(ii); Liquor Tax Law [*Shuzei Ho*] (Law No. 6 of 1 953) Articles 6-3(2), 6-3(4), 30-3(2) and 30-4(2); National Taxes Common Provisions Law Articles 65 ff.; Stamp Tax Law [*Inshizei Ho*] (Law No. 23 of 1967) Article 20; etc.

3 Under the Article l(1)(vii) of the Local Taxes Law [*Chihozei Ho*] (Law No.226 of 1950), administrative assessment procedures are referred to as ordinary collection (*futsu choshu*). Such ordinary collection operates as a special collection system (see 5.10.2. below) .

4 National Taxes Common Provisions Law Article 16(1)(ii).

5 National Taxes Common Provisions Law Article 15(1).

6 Some scholars argue that automatic assessment is not a true form of assessment because there is no disposition subject to review.

7 National Taxes Common Provisions Law Articles 16(1)(i) and 17 ff.

8 National Taxes Common Provisions Law Article 25.

9 National Taxes Common Provisions Law Articles 24 and 26.

10 See National Taxes Common Provisions Law Article 40; National Taxes Collection Law [*Kokuzei Choshu Ho*] (Law No, 147 of 1959) Articles 47 ff.

l1 For a detailed analysis of this issue, see Chapter 14 below.

12 National Taxes Common Provisions Law Article 19.

13 lnheritance Tax Law [Sozokuzei Ho^] (Law No. 73 of 1950) Article 3 l(2); etc.

14 National Taxes Common Provisions Law Article 20.

15 National Taxes Common Provisions Law Articles 61(1) and 65(5).

16 National Taxes Common Provisions Law Article 23(1).

17 National Taxes Common Provisions Law Article 23(4).

18 National Taxes Common Provisions Law Article 23(2).

19 Income Tax Law [*Shotokuzei Ho*] (Law No. 33 of 1965) Article 64; etc.

20 National Taxes Common Provisions Law Article 24.

2l National Taxes Common Provisions Law Article 25.

22 National Taxes Common Provisions Law Article 26.

23 Income Tax Law Article 1 55(2); Corporation Tax Law *[Hojinzei Ho*] (Law No. 34 of 1965) Article 130(2).

24 Income Tax Law Articles 1 43 and 1 66; Corporation Tax Law Articles 121 and 146.

25 For examples, see *Udono v. Commissioner of Tokyo Regional Taxation Bureau* (Supreme Court, May 31, 1963) 17(4) *Minshu* 617; *Director of Nakano Tax Office v. Daishin Co*. (Supreme Court, April 25, 1974) 28(3) Minshu 405.

26 For example, see *Tanaka v. Director of Suginami Tax Office* (Supreme Court, September 1 7, 1968) 1 5(6) *Shomu Geppo* 714. However, the trend in academic opinion is to use the guarantee of procedural fairness in Article 3 1 of the Constitution [*Nihonkoku Kenpo*] (1947) to justify identical obligation to provide reasons for correction of white and blue returns, even though there are no express provisions requiring that reasons be provided in the case of a correction of a white return: see Miki, *Yoshikazu, Practical Dictionary of Tax Procedural Law* [Sozei Tetsuznki Ho Katsuyo Jiten] (1988), at 155 ff.

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Figure 3-1: Periods within which Corrections and Determinations can be made

<table>
<tr><th colspan="3">Type of Correction or Determination</th><th>Where the Taxpayer has Under-declared or nor filed a Return</th><th>Where the Taxpayer is engaging in Tax Evasion</th></tr>
<tr><td rowspan="5">Regular Correction</td><td colspan="2">Correction of a Return Submitted before the Deadline</td><td>3 years from the Statutory Filing Deadline</td><td rowspan="13">7 years from the respective Statutory Filing Deadlines</td></tr>
<tr><td rowspan="2">Correction of a Return Submitted after the Deadline</td><td>Return Submitted less than three years after the Deadline</td><td>3 years from the Statutory Filing Deadline or 2 years from the date of actual submission, whichever is the later</td></tr>
<tr><td>Return Submitted more than three years after the Deadline</td><td>5 years from the Statutory Filing Deadline</td></tr>
<tr><td colspan="2">Correction of a Determination</td><td>5 years from the Statutory Filing Deadline</td></tr>
<tr><td colspan="3">Determination</td><td>5 years from the Statutory Filing Deadline</td></tr>
<tr><td colspan="3">Correction Reducing the Tax Debt or Increasing Tax Loss</td><td>5 years from the Statutory Filing Deadline</td></tr>
<tr><td colspan="3">Correction Reducing Tax Loss</td><td>5 years from the Statutory Filing Deadline</td></tr>
<tr><td rowspan="3">Regular Administrative Determination in relation to Taxes Imposed by Administrative Assessment</td><td rowspan="2">Administrative Assessment based on a Taxable Base Return</td><td>Submission of a Taxable Base Return</td><td>3 years from the Deadline for the Taxable Base Return</td></tr>
<tr><td>No Submission of a Taxable Base Return</td><td>5 years from the Deadline for the Taxable Base Return</td></tr>
<tr><td colspan="2">Administrative Assessment not requiring a Taxable Base Return</td><td>5 years from when the tax liability arises</td></tr>
<tr><td colspan="3">Administrative Determination Reducing the Tax Debt</td><td>5 years from the Deadline for the Taxable Base Return</td></tr>
</table>

Chapter 4
Tax Audits and Post-audit Procedures

4.1. Tax Audits

Many of the Japanese national taxes such as income tax and corporation tax employ the self-assessment principle. Consequently, initial assessment of the amount of a taxpayer's tax debt for income tax or corporation tax occurs with the filing of a return. In other words, in Japan, the taxpayer must take the initiative to assess the amount of his or her own tax debt by making calculations in accordance with tax laws. The tax return thus has the legal effect of assessing the amount of the tax obligation, differing from the system seen in many European countries, where the taxpayer files taxable base figures on the basis of which the tax authorities administratively assess tax.

However, where the amount shown in the return does not accord with tax laws or there is some error in the factual circumstances, the tax authorities have the power to conduct a correction or determination. These powers exist only in a secondary capacity to the taxpayer's return.

For the tax authorities to conduct a correction or determination according to law, it is indispensable to have full access to materials relating to the facts of the case. Tax laws empower the tax authorities (*i,e.* tax officials) to make inquiries of the taxpayer and examine material evidence in order to obtain the necessary data.

Such inquiries and examinations are known collectively as assessment audits (*kazei shobun no tame no chosa*) and are described in the individual substantive tax laws, such as Article 234 of the Income Tax Law,[1] Article 154 of the Corporation Tax Law,[2] Article 62 of the Consumption Tax Law[3] and Article 60 of the Inheritance Tax Law.[4]

Tax audits under existing law can be divided broadly into four categories.[5]

(1) *Audits under Individual Tex Laws*
This category includes the abovementioned assessment audits (correction, determination, recorrection, administrative assessment, *etc.*) as well as audits to adjudicate administrative review cases such as claims for correction, objections and NTT review.

(2) *Delinquency Audits*

These audits have the aim of discovering the extent of assets held by a tax defaulter under Articles 142 ff. of the National Taxes Collection Law.[6]

(3) *Audits under the National Taxes Infringement Control Law[7] (Criminal Tax Audits)*

Where it is considered that the taxpayer is engaging in tax evasion ("deception or other unfair conduct"), an audit may be conducted to ascertain the true factual matrix.

(4) *Purely Voluntary Audits*

These audits do not necessarily have a basis in legislation, but are a form of administrative

guidance.[8] The various kinds of extra-legal inquiries (including correspondence inquiries) can also be seen as falling within this category.[9]

4.1.1. Audit Statistics

The statistics for field audits for tax assessment are as follows.

(I) *Corporate Taxpayers*
In the 1992 administrative year (July 1991 to June 1992), there were 179,000 field audits of corporate taxpayers within the jurisdiction of the Tax Office, *i,e*. those with capital of up to ¥l00,000,000. This computes as a rate of 7.l%.. For corporations within the jurisdiction of the Examination Division of the Regional Taxation Bureau, *i.e*. those with capital of more than ¥100,000,000, there were 5,000 audits at a rate of 14.6%.

In the 1993 administrative year (July 1992 to June 1993), the figures were 174,000 (6.7%) and 5,000 (14.6%) respectively.

These figures, in addition to the 1991 figures, can be expressed in tabular form as follows.

	Administrative Year	Corporations within the Jurisdiction of the Tax Office	Corporations within the Jurisdiction of the Examination Division	Total
Number of Field Audi ts	1991	l81,000	5,000	186.000
	1992	179,000	5,000	184.000
	1993	174,000	5,000	179,000
Rate of Field Audits (%)	1991	7.6	14.9	7.7
	1992	7. l	14.6	7.2
	1993	6.7	14.7	6.8

The trend is for slightly fewer audits and a lower rate of audits each year.[l0]

Note that from July 1992 audits for corporation tax and consumption tax were conducted simultaneously.

(2) *Individual Taxpayers*

In the 1992 administrative year, 164.000 field audits and 572,000 ex post facto dispositions[11] were conducted by the Individual Taxes Section (Income Tax and Consumption Tax Units) of the Tax Office.[12]

In the 1993 administrative year, the figures were 150,000 and 562.000 respectively. [13]

However, almost all 41,240,000 salaried income earners in Japan[l4] fall under the year-end adjustment system, so the number of taxpayers who submit returns is only 8,580.000.[15] This figure excludes taxpayers who have no tax debt but submit a return as a formality to avoid potential penalty taxes due to a later correction, so the actual number of returns must be somewhat higher - this statistic is not available. Also, some audits are conducted on taxpayers

who do not fall under the self-assessment system. For these reasons, it is not possible to produce a meaningful figure for the rate of audits.

As with corporations, audits into individual income tax and consumption tax are conducted simultaneously.

4.1.2. Selection of Audit Cases

A tax official assigned to audits draws up a list of cases that may warrant audit, and the Coordinating Officer (*tokatsukan*) then makes up a final selection from that list. In some cases the Coordinating Officer may draw up the initial list also.

Most cases are included in the initial list as a result of manual analysis of data based on the experience and knowledge of the tax official. The Coordinating Officer then makes reference to any materials that have been collected and makes the final selection.

Selection of cases for audit based on computer analysis is not widespread at this stage, by if the tax authorities implement the KSK System,[16] this situation with undoubtedly change dramatically.

The following circumstances may draw the attention of the relevant officer to a particular case.

(a) General circumstances:

- membership of an industry that has been singled out for particular attention;
- membership of industries enjoying a boom period;
- construction of a new branch office or factory;
- comparison to similar companies engaged in the same industry;
- unusual forms of transaction;
- increase in capital or establishment of a subsidiary;
- passage of a long period without an audit;
- incorporation of an individual business.

(b) Data and information:

- data from internal or external sources;
- matters requiring collaborative audits or a series of audits;
- acquisition of assets by a representative;
- important data relating to taxable events.

(c) Profit/loss and lending/borrowing patterns:

- weak profits compared to growth in turnover;
- weak profits in continuous years;
- extraordinary cost items;
- movement in rates of gross profit;
- increase or decrease in inventory;
- increase or decrease in property or buildings;
- high levels of personal debt;
- suspicious temporary account.

(c) Other:

✶ improper activity.

In addition, attention may be focussed on taxpayers who are expected to have a large tax debt or those who are considered to be of bad character.

4.1.3. Types of Audit

Depending on whether the contents of the return are simple or complex, the Tax Office determines whether to conduct an interview (office) audit or a field audit. Interview audits are conducted at the Tax Office which has jurisdiction over the area where the taxpayer is resident. Field audits normally occur at the place where the taxpayer's books, records and original documents are kept. The taxpayer may alter the time and place of a field audit by contacting the Tax Office by telephone.

(1) *Interview Audit (Office Audit)*

Interview audits are conducted when the revisions required to the contents of the return are relatively simple. A notification is mailed to the taxpayer to summon him or her to the Tax Office. This notification will contain a proposed date and time for interview, which can be altered at the taxpayer's request.

Where the contents of the return can be clarified over the phone or by the taxpayer mailing the relevant documents to the Tax Office, the Audit Officer may dispense with the requirement to attend the Tax Office personally.

(2) *Field Audit*

The date and time for a field audit is normally notified to the taxpayer or his or her *zeirishi* by telephone, and never in writing. There is no provision as to how much notice must be given, but current practice is to allow four to seven days before the audit. If the date and time proposed by the Tax Office is not convenient, the taxpayer may request an alteration .

Audits may also occur without prior appointment. According to a survey of Tokyo *Zeirishi* Association members,[17] 6.0% had experienced such surprise audits. These surprise audits were most common for industries engaged in cash transactions, and the methods employed are generally forceful.

4.1.4. Features of the Different Types of Audit

Tax audits are conducted by several sections within the Tax Office: the Corporate Taxes Division deals with corporation tax and consumption tax for corporations, the Individual Taxes Division deals with income tax and consumption tax for individuals, and the Assets Taxes Division deals with inheritance tax, income tax relating to property conveyances and land value tax.

There are also audits of holders of large-scale assets, those considered to be of bad character and high income earners by the Information and Examination Section of the Regional Taxation Bureau.

(1) *Audits by the Corporate Taxes Division*

The Corporate Taxes Division conducts simultaneous audits of corporation tax and consumption tax.

As corporation have relatively well-prepared accounts ledgers and evidence of transactions, the audit focuses on examination of these documents.

The feature of audits by the Corporate Taxes Division is the way they 'demolish' the accounts ledgers, checking whether simple errors have been made, whether outlays that should not be included as expenses have been included as such, whether there have been omissions from inventory and whether there have been omissions from accounts receivable. These items are checked against the original documents and materials obtained by the Tax Office.

Further, it is not uncommon to extend the audit to third party record-keepers such as clients and suppliers,[18] and in some cases there may even be examination of the bank accounts of corporation representatives and their families.[19]

(2) *Audits by the Individual Taxes Division*
The Individual Taxes Division (excluding officials in charge of assets taxes) conducts simultaneous audits of income tax and consumption tax.

The feature of audits by this Division is their 'reconstitutive' nature. As with audits into corporations tax, audits into income tax are based primarily on examination of accounting ledgers, but it is not uncommon in the case of individuals for ledgers to be incomplete and it may be necessary to factor in increases in living allowance or assets (particularly bank accounts[20]) and even to use inductive calculations to arrive at a figure for the amount of income. In other words, the Audit Officers 'reconstruct' the evidence required for the assessment.

White returns are common with those earning income from individual businesses,[21] and the incidence of inductive calculations is particularly high for filers of white returns.

(3) *Audits by the Assets Taxes Division*

The feature of audits by the Assets Taxes Division is th close attention paid to correlation of otherwise between materials collected before or during the audit (such as materials collected from financial organizations and securities companies) and the contents of the return .

Accordingly, the incidence of extended audits of third party record-keepers covering bank accounts or financial organizations is overwhelmingly greater than in audits by other Divisions.[22]

(4) *Audits by the Information and Examination Section of the Regional Taxation Bureau*

The Information and Examination Section of the Regional Taxation Bureau conducts audits covering the gamut of corporation tax, income tax, inheritance tax, *etc.*

The feature of audits into corporation tax, income tax and consumption tax is that they are conducted by small groups of officials (normally named after the senior officer) who simultaneously attend without prior notice the office (or offices if there are more than one)
and residence of taxpayers who are expected to have a high tax debt or who are considered to be of bad character.

The feature of audits of assets taxes is forceful audit procedures (although normally not without prior notice) into cases such as large inheritances.

In recent years,. the tax authorities have given greater attention to the audits of the Information and Examination Section, and there is a trend to increase employee numbers. [23]

4.1.5. Prior Notification

In the various tax laws, there are no express provisions entitling the taxpayer to prior notification of assessment audits.[24] However, this does not necessarily mean that there is no legal obligation to issue prior notification. It is simply an indication of an inadequacy in current legislation.

In the Tax Administration Initiatives of 1976,[25] the National Tax Administration stated:

> In view of the fact tha tax audits are to be conducted with the understanding and cooperation of the taxpayer within the boundaries of socially acceptable behaviour after due consideration has been given to the balance between the public interest and private rights, and audit should generally be carried out after giving prior notice, and audits without notice should be restricted to the bare minimum. Extended audits of third party record-keepers are to occur only where they are unavoidable from an objective viewpoint.

On the other hand, the Initiatives also state:

> The presence or absence of prior notification has no effect whatsoever on the legal validity of the exercise of the right to conduct tax audits.

4.1.6. Time and Place of the Audit

There are no specific provisions in the various tax laws relating to the date, time or place of audits.[26] However, it can be said that these details must be determined reasonably and within "the boundaries of socially acceptable behaviour". They must be decided by mutual agreement in accordance with the convenience of both sides. An extension of the date and time of audit initially proposed by the tax authorities dies not amount to a criminal offence of obstructing an audit.[27]

4.1.7. Elements to Establish Necessity for an Audit

The various tax laws stipulate that assessment audits may be conducted "when there is a necessity for an audit".[28] In other words, an audit must satisfy a test of necessity to claim legal validity. However, the tax laws do not provide how to test whether necessity exists.

The Supreme Court has said that the necessity requirement is satisfied where there is "objective necessity, taking into account specific facts of the case, such as the aim of the audit, the facts that are to be audited, the manner in which the contents of the claim or return are described, the state of preservation and completion of accounting ledgers, the form of the business adopted".[29] In other words, the tax authorities may conduct audits only in cases where *objective* necessity exists, not just where the tax authorities decide unilaterally that the audit is necessary.

4.1.8. Communication of the Reasons for the Audit

Under current tax laws, there are no provisions requiring communication to the taxpayer of the reasons for an audit. However, the fact that there are no express provisions does not mean that there is no obligation to notify the taxpayer why he or she is the subject of an audit. It merely indicates an inadequacy in current legislation.

In relation to the communication of reasons, one court has stated that "In order to conduct an audit, there must be a logical basis and reason for doing so".[30] However, the Supreme Court has adopted a more conservative stance on this issue, saying "When conducting an inquiry and examination, prior notification of the date, time and place of execution and detailed notification of reasons and necessity for the audit are not absolute legal requirements".[31]

4.1.9. Identification of Audit Officers

Tax officials who conduct inquiry and examination for the purposes of an audit must carry identification and present it whenever demanded by the subject of the audit.[32]

Even if the taxpayer does not demand to see identification, an audit can be invalidated by the failure to show identification.

4.1.10. Persons Subject to Inquiry and Examination

The Corporation Tax Law mentions only "corporations" as the subject of audits. There is no concrete specification of who bears the burden of the duty not to obstruct public officials (*junin gimu*): it is not clear whether it is the company representative and directors, or the employees as a whole.[33]

From an interpretation of the text of the Corporation Tax Law, the person bearing the duty not to obstruct public officials would be the company representative, upon whose instructions the employees submit to the audit. However, in the realities of tax audits, the inquiry and examination of employees and family members who have no responsibility for company activities is commonplace. However, it is clear from the text of the Law that these persons do not have any duty not to obstruct public officials.

The Income Tax Law specifies the following as bearing the duty not the obstruct public officials:
(a) persons with a tax debt or considered to have a tax debt;[34]
(b) persons obliged to submit withholding tax collections;[35] and
(c) third parties having transactional relations with persons having a tax debt.[36]

In general terms, (a) refers to audit of the taxpayer himself or herself, whereas (b) and (c) refer to so-called extended audits of third party record-keepers.[37]

4.1.11. Things Subject to Audit

Articles 153 and 154 of the Corporation Tax Law state respectively that the tax authorities may examine "books, records and other documents relating to the business" and "books, records and other articles".

"Books and records" are though to include accounting books, original documents for the closing

of accounts, as well as order forms, contracts, statements of delivery, bills receipts, etc. More problematic are the "other articles". These should probably be restricted to documents akin to accounting documents such as stock inventories, but in actual practice, it is interpreted liberally to include the personal possessions of individuals, thus extending the discretion of tax officials even further in the context of audits.

4.1.12. Taking Possession of Books, Records and Other Documents

In the realities of assessment audits, it is common for tax officials to take possession of books, records and other documents and remove them to the Tax Office in order to make the audit run more smoothly. However, under the audit powers expressed in the Corporation Tax Law, Income Tax Law and other individual tax laws, there are no provisions creating a power to remove documents. The practice of removal is based solely on the "cooperation" of the taxpayer. Therefore, the taxpayer is within his or her rights to refuse a request to remove documents.

However, many Audit Officers take the taxpayer's "cooperation" for granted, so there are many instances where the taxpayer feels forced to "cooperate".

4.1.13. Taking Copies of Books, Records and Other Documents

In the realities of assessment audits, tax officials require many copies of books, records and other documents for the sake of efficiency. No provisions in the various substantive tax laws specify the power to make copies when exercising the power to inquire and examine. In spite of this, the fact is that tax officials frequently demand copies.[38]

The demand to make copies is only a request for cooperation from the person being audited, but again the taxpayer may feel forced to " cooperate. "

4.1.14. Recordings

There are no provisions requiring audio tape-recording dialogue between the Audit Officer and the taxpayer during an audit. However, Audit Officers have in the past exhibited a strong dislike of being recorded on audio-tape. Attempting to record dialogue will create a bad impression with the Audit Officer, which could have ramifications later on in the audit.

4.1.15. Right to Enter Premises

When executing the assessment audit which is by nature voluntary, it is an issue whether there is a right to enter the premises of the taxpayer without express permission.

The National Tax Administration has the view of entry of the taxpayer's premises that:

> The right to enter the taxpayer's premises is an integral component of the right to inquire and examine in most situations. Therefore, refusing entry to tax officials without reasonable justification will satisfy the elements establishing the criminal offence of obstructing an audit and penalties may be imposed accordingly.[39]

On this point, the various provisions governing inquiry and examination for assessment audit specify powers to inquire and examine, but do not clearly recognize a right to enter premises. The late Hayashi Shuzo, former Head of the Cabinet Drafting Bureau stated that:

> From the point of view of persons whose place of business, office or residence is to be entered by officers of an administrative body, there is a considerable restriction or breach of their rights and freedoms, so such activities must obviously have their basis in express statutory provisions.[40]

Given this combination of legal provisions and academic opinion, it is extremely difficult to justify the interpretation of the National Tax Administration that the provisions setting out the power to inquire and examine presuppose a right of entry.

In a case at Supreme Court level where tax officials had entered the taxpayer's factory without permission with the aim of collecting materials, the Court found that such acts were inconsistent with the voluntary nature of audits established by law, and ordered the payment of ¥100,000 as consolation money under National Tort Claims Law[41] Article l(1).[42]

4.1.16. Limits to Field Audits

During a field audit, the power of the assessment audit officer to inquire and examine is restricted strictly to inquiry and examination . The audit is strictly voluntary, and differs fundamentally from compulsory audits under Article 142 of the National Taxes Collection Law or Article 2(1) ?f the National Taxes Infringement Control Law. Again, assessment audits "must not be interpreted as audits of suspected criminal offences",[43] the meaning of which is self-explanatory.[44]

Consequently, during field audits, tax officials may not open desk drawers or strongboxes on their own accord without the permission of the person being audited. Of course, personal bank accounts unrelated to the business, family bank accounts, employees' bank accounts, private possessions such as handbags and private documents such as letters are not subject to examination: needless to say, it is also necessary to obtain the voluntary cooperation and consent of the taxpayer to photocopy such items.

4.1.17. Limits to the Duty not to Obstruct (*Junin Gimu*)

A person being audited has a legal duty not to obstruct public officials in relation to the assessment audit. Performance of the duty is secured by threat of penal servitude of up to one year or a fine of up to ¥200,000 for "refusing to answer inquiries, answering inquiries falsely, resisting, evading or obstructing an audit, submitting false books, records or other documents".[45]

This duty not to obstruct is not limitless. However, the tax laws are extremely deficient in this respect and the duty is defined more by judicial precedent, academic opinion and administrative precedent.

4.1.18. Extended Audits of Third Party Record-Keepers (*Hanmen Chosa*)

Extended audits cover "persons with whom the taxpayer has transactional relations"[46] or "persons in an inheritance relationship with the taxpayer".[47]

Extended audits can occur when, after the taxpayer himself or herself is under audit, they are absolutely necessary in objective terms, In such a case, the tax laws do not contain express provisions as to whether the consent of the taxpayer is required. In fact, the tax authorities conduct extended audits without the consent of the taxpayer.

For extended audits of financial institutions, the Director of the Tax Office issues a Bank Audit Certificate. Not only is this certificate issued in a form that permits no intervention of the will of the taxpayer, but there is

also much ambiguity as to its legal character and whether it has the effect of a Notification of Audit. The certificate has no compulsive effect like a warrant. However, in fact it provides unhindered access in conducting an extended audit of the financial institution. Financial institutions do not appear to find this problematic, and there have been few attempts to protect the financial privacy of customers .

4.1.19. Cooperation from Other Public Bodies

The tax authorities can seek cooperation in obtaining inspection or possession of relevant materials from administrative organs and other government-related bodies where this is necessary for an audit.[48] Sharing of information resulting from such requests for cooperation does increase audit efficiency, but has serious connotations for retention of privacy.

4.1.20. Representatives

In dealing with tax matters, taxpayers can be represented by *zeirishi,* attorneys and certain certified public accountants.[49]

However, the scope of representation has been limited at the convenience of the tax authorities. Even where evidence of commission of a representative has been submitted to the tax authorities, they conduct correspondence and negotiations directly with the taxpayer and the appointed representative is not necessarily treated as a true representative.

4.1.21. Presence of Third Parties

There may be occasions during an audit when the person under audit desires the presence of a third party (apart from his or her representative).

In the past there have been cases where tax officials have overstepped the mark in the execution of their duties, scarring the taxpayer's dignity or personality. For this reason, the taxpayer may wish have an objective third party present to avoid such over-zealousness by the Audit Officers and to ensure that the audit proceeds with courtesy and consideration.

At present, there is nothing in the tax laws to govern the presence of third parties.

4 1.22. Consultation During and Immediately After the Audit

The Audit Officer will hold a consultation with the taxpayer or his or her representative on disputes that arise during the audit. There are no provisions governing the procedure to be adopted in during such a consultation. Therefore, it is up to the officer's discretion which topics will be discussed and by what procedures.

Generally speaking, the taxpayer is asked for confirmation of the facts, and the representative is asked about accounting practices and interpretations of tax laws which were used to present the facts.

When the audit enters its final stages, if there is an obvious oversight in the amount of income, the Audit Officer will point this out and seek an explanation or recommend the taxpayer to submit a revised return.

If the taxpayer does not follow the directions of the Audit Officer, a correction disposition may ensue.

Upon returning from an audit, the Audit Officer will report to his or her superior (who would be the Coordinating Officer in the case of an Audit Officer from the Tax Office) and seek further instructions. The Audit Officer will also report to the superior if a telephone call is received from the taxpayer or the representative. As a general rule, issues raised during the audit and items discussed on the telephone will be recorded. It may be necessary to confer with the Adjudication Unit of the Tax Office or the Regional Taxation Bureau where difficult decisions are required.

4.1.23. Completion of the Audit

Just before an audit is to conclude, the Audit Officer points out any oversights in the amount of income to the taxpayer, although the final determination of whether there has been an oversight is conducted by the officer's superior (the Coordinating Officer).

There is no independent unit to reappraise the outcome of audits. Therefore, the audit will normally be concluded upon the Coordinating Officer making the final determination, unless the matter is referred to the Important Cases Council (*juyo jian shingikai*).

Where a case involves heavy penalty tax or it is necessary to decide whether a correction disposition is required or not, discussion occurs in the Important Cases Council. This Council is made up of the Director of the Tax Office and the relevant Deputy-Director, Coordinating Officer, Audit Officers and Collection Officers. The Council meets as often as required.

The circumstances of the audit are recorded and stored. This record will be referred to in any subsequent audits.

4.1.24. Result of the Audit

The result of the audit is that, if there are no irregularities, the taxpayer's return is confirmed.[50] However, there are no provisions prohibiting re-audit if any new issues are discovered in later years, so a second audit may occur on different grounds for a return which had already been confirmed where the tax authorities determine that such a second audit is needed.

As a result of the audit, if it is pointed out to the taxpayer that an oversight has occurred in the amount of income declared on the initial return and the taxpayer confirms that the oversight was made, the taxpayer will submit a revised return.51 However, the issues pointed out in **4.2.1.** (below) need to be addressed in this case.

If the audit leads to oversights being pointed out to the taxpayer, but the taxpayer does not respond, the tax authorities will proceed to a correction disposition. In recent years, it has become less and less frequent for the tax authorities to use correction dispositions.[52] However, this is because, as mentioned in **4.2.1.**, taxpayers are rather reluctantly agreeing to submit revised returns.

4.1.25. Preliminary Audits (*Jizen Chosa*)

Preliminary audits occur in the business year before the deadline for submission of return. The National Tax Administration has adopted a liberal interpretation of its power to conduct such preliminary audits. However, this opinion is inconsistent with the logic of the self-assessment system. In particular, given that primary assessment of the amount of tax owing is determined by the taxpayer, audit of the appropriateness of the contents of a return or the absence of a return can occur only after the deadline for filing returns has passed.[53]

Particularly prominent recently are preliminary audits just before the deadline with the aim of prompting correct returns. These audits do not meet the requirement of objective necessity. There are no express legislative provisions to regulate such audits.

4.1.26. The Nature of Assessment Audits

An assessment audit can only be validly conducted on the premise of the presence or absence of a return submitted by the taxpayer, which is the primary assessment, In other words, the audit has a secondary character.
Tax laws state that assessment audits "must not be interpreted as criminal investigations".[54] In terms of characterization, they are audits conducted to attain everyday administrative goals. Further, these audits are conducted with the consent of the person who is the audit subject, In other words, they are "voluntary audits".

However, tax laws make persons uncooperative to an audit subject to "penal servitude of up to one year or a fine of up to ¥200,000".[55] A person is classed uncooperative if he or she "does not answer the questions of an official or gives false answers, or .... resists, obstructs or evades an audit"[56] or if he or she "submits accounting documents containing false entries during an audit".[57]

In this way, assessment audits have the nature of being voluntary audits accompanied by indirect compulsion, being enforced by means of penalties. These audits are called voluntary, but in some cases there is the possibility that criminal responsibility becomes an issue. In spite of this, the provisions requiring necessity for an audit are extremely primitive under current law: the provisions merely say that an audit may be conducted "when necessary".[58] This is the antithesis of various foreign systems, where procedures for audits are provided for in detail. The Japanese law on audits is completely inadequate in procedural terms.[59]

4.1.27. Duty of Confidentiality on Tax Officials

As public servants of national or local public bodies, tax officials have a duty of confidentiality. In particular, "public servants must not reveal secrets obtained through their employment, even after leaving the public service"[60] or else they will face penal servitude of up to one year or a fine of up to ¥300,000.[61]

On the other hand, each of the tax laws has provisions reinforcing the general public servants' duty of confidentiality for tax officials. For instance, the Income Tax Law states: "A person who is or was working on an audit into income tax and who reveals or appropriates secrets obtained in relation to that work will be subject to penal servitude of up to two years or a fine of up to ¥300,000".[62] The important point here is that persons who are or were working on an audit relating to income tax have a duty to keep secrets "obtained in relation to that work", in particular secrets of the taxpayer or third parties. The provision is required because there are cases where it is possible for a tax official. backed by the authority of the power to inquire and examine, to have access during the execution of that power to secrets of taxpayers and third parties against their will.

4.1.28. Purely Voluntary Audits

Purely voluntary audits are taken as a form of administrative guidance, and have no accompanying legal penalties for refusal to comply.

However, in reality, it is very difficult to distinguish between a 'purely voluntary audit' and an 'audit backed by penalties', and the distinction is difficult for the taxpayer to comprehend.

The most typical case of a purely voluntary audit is the extra-legal inquiry (correspondence inquiry) described in the next section.

4.1.29. Extra-legal Inquiries (Correspondence Inquiries)

Tax laws require a taxpayer to submit all sorts of documents. However, it is often difficult to understand the true circumstances of a transaction from these documents alone. For this reason, the tax authorities may send out or distribute a Business Contents Inquiry Notice (*gyomu-naiyo-to ni tsuite no otazune*), a Return Contents Inquiry Notice (*shinkoku-naiyo ni tsuite no otazune*) or a Check Table for Withholding Tax (*gensen shotokuzei chekku-hyo*). These 'inquiries' are known collectively as 'extra-legal inquiries' because they have no basis in tax law.[63]

Such extra-legal inquiries eliminate the need for taxpayers to personally attend the offices of the tax authorities with the documents in hand, and improve the efficiency of tax administration. However, there are many cases where taxpayers who do not respond to the inquiry are pressured psychologically, through express statement or hint of some future disadvantage or inconvenience, such as immediate switching to a full audit or statements like “... otherwise we may require your attendance at our offices" or "please reply by such-and-such date ... ": this could be interpreted as improper or illegal use of official powers.

4.1.30. Audits under the National Taxes Infringement Control Law (Criminal Tax Audits)

The power to conduct audits under the National Taxes Infringement Control Law exists for the purpose of uncovering and collecting evidence with the aim of eventually issuing a notification disposition or prosecution in relation to an infringement case. In this context, an infringement case is a case relating to a tax breach requiring the specialist knowledge and experience of a Collection Officer to audit it. In particular, this power to audit is used to collect substantiating data when it is suspected that an infringement has occurred, and in reality has the character of a criminal investigation. On this point, this type of audit differs from the purely administrative audit used to collect data to allow assessment dispositions under the various substantive tax laws.

In relation to the mode of the audit, there are voluntary and compulsory forms. The National Taxes Infringement Control Law states that, as a rule, a permit must be obtained from a judge to conduct a compulsory audit.[64] However, Article 3 of the Law dispenses with the requirement for a permit for urgent cases relating to indirect taxes.

4.1.31. Delinquency Audits

Where the taxpayer does not voluntarily pay tax, the tax authorities must attempt to force compliance with tax obligations. The assets of the defaulter will be seized and converted to currency, which will be applied to satisfaction of the tax debt. These procedures are known as delinquency dispositions (*taino shobun*).

In the case of a tax debt, the obligee is the national or local public body, which can take steps on its own behalf to recover its debt. This power to enforce the obligee's own debts is a clear area of difference between a tax debt and a civil debt.

In order to enforce collection of delinquent taxes, it is necessary to establish the extent of the defaulter's assets. Thus, Collection Officers have the power, within the boundaries of what is necessary to audit the defaulter's assets, to question the defaulter and third parties who have possession of the defaulter's assets, as well as examine books, records and other documents relating to the defaulter's assets.[65] This procedure is a voluntary audit, but penalties exist for refusing to comply with the audit.[66]

In addition, Collection Officers may conduct searches of the defaulter's belongings and residence where necessary during a compulsory audit.[67]

4.2. Post-audit Procedures (*Chosa-go Tetsuzuki*)

4.2.1. Recommendation to File a Revised Return

When a taxpayer notices that the amount of the tax debt determined in his or her own return or in a correction or determination is too low, he or she may submit a revised return to revise the amount of the tax debt, In other words, submission of a revised return is an act based in principle on the will of the taxpayer.

However, the tax authorities often 'recommend' (*shoyo* or *kansho*) the taxpayer to submit a revised return upon finding at the conclusion of an audit that the amount of the tax debt needs to be revised upwards. Such recommendation is an instance of administrative guidance. The aim of such administrative guidance is to avoid correction dispositions wherever possible, in favour of revised returns that are in form based on the taxpayer's will. The tax authorities thus do not need to gather as many facts or as much evidence as would be required for a correction disposition, and in addition can prevent subsequent administrative litigation. In other words, the use of the recommendation to submit a revised return in tantamount to denying the taxpayer's right to tax appeals procedures.

The reason why taxpayers feel they must submit to such recommendations, is that if they do not, the Audit Officer may declare or hint that the audit will be extended in time or scaled up.

Thus, it is the case that recommendations to submit a revised return strike at the very core of the self-assessment system.

4.2.2. Revocation of Permission to File a Blue Return

Under the self-assessment system there are white and blue tax returns. Blue returns can be submitted upon approval by the Director of the Tax Office for income tax on income from real estate, business or forestry, or for corporation tax.[68]

To be able to submit a blue return, the taxpayer must be able to attach books, records and other documents up to a specified standard recording details of transactions.[69] For the taxpayer, there are many privileges granted to those who successfully apply to submit a blue return rather than an ordinary white one, Inductive calculations of tax are not permitted for blue returns, and corrections are permitted only when there is an error in the return discovered from an examination of the books, records and other documents.[70] Furthermore, reasons for the correction must be attached to any Notification of Correction.[71] Failure to attach reasons will in itself be enough to invalidate the correction disposition.[72]

However, where a person who has obtained approval to submit a blue return has not retained the degree of documentation required by the ministerial ordinance, or where grounds to raise suspicions about the truthfulness of the accounting documents as a whole are discovered such as concealment or disguising of some or all transactions in the accounting documents, the Director of the Tax Office can revoke the approval to submit a blue return even in the subsequent tax year.[73] The taxpayer must be considered to have been submitting white returns from the year to which the revocation applies onwards.

The revocation leads to various privileges being divested. The revocation is clearly disadvantageous to the taxpayer, but the decision whether to revoke is entirely discretionary for the Director of the Tax Office.

There are many cases where a taxpayer's blue return is not revoked because, even though there has been activity which satisfies the requirements for revocation, the taxpayer has been cooperative towards the tax audit. On the other hand, there are also cases where taxpayers have had their blue returns revoked for being uncooperative. Thus, whether the blue return is revoked or not seems to depend on the degree of cooperation with the tax audit, and the determination of whether the taxpayer has been cooperative or not is left to the discretion of the Director of the Tax Office.

4.2.3. Corrections and Recorrections (Administrative Assessments)

The tax authorities can correct the contents of a taxpayer's tax return when those contents are contrary to law or where the facts differ from those revealed during an audit.[74] This is known as correction.

If the amount of the tax debt is found to be too large or too small even after correction has occurred, a recorrection is possible.[75] Such recorrection can occur as many times as necessary before the statutory filing deadline.

Recorrection often occurs at the convenience of the tax authorities. For instance, if the tax authorities conduct a correction of a blue return filer without attaching reasons and they notice this omission during objection proceedings, they may recorrect back to the lower amount calculated by the taxpayer in the original return, thus removing the reason for the objection. In other words, the tax authorities can use recorrections to reverse a correction that they realise cannot be maintained.

After recorrecting to the original amount, the tax authorities might then re-recorrect to increase the amount of the tax debt once more.

4.2.4. Time Limits for Administrative Assessment

Figure 4-1: Summary Table of Limitations Periods

<table>
<tr><td colspan="3"></td><td>Regular limitation period</td><td>Irregularities such as fraud</td></tr>
<tr><td rowspan="5">upward correction</td><td colspan="2">correction subsequent to a timely return</td><td>3 years</td><td>7 years</td></tr>
<tr><td rowspan="2">correction subsequent to an untimely return</td><td>correction in relation to a return filed within 3 years of the statutory filing deadline</td><td>whichever is the later of 3 years or 2 years after the submission date</td><td></td></tr>
<tr><td>correction in relation to a retum filed more than 3 years after the statutory filing deadline</td><td>5 years</td><td></td></tr>
<tr><td colspan="2">correction subsequent to a determination</td><td>5 years</td><td rowspan="2"></td></tr>
<tr><td colspan="2">correction which decreases the amount of' loss</td><td>5 years</td></tr>
<tr><td colspan="3">downward correction (including corrections that increase the amount of loss)</td><td>5 years</td><td>n.a.</td></tr>
<tr><td colspan="3">determinations</td><td>5 years</td><td>7 years</td></tr>
</table>

(I) *Normal Limitation Period*

Corrections may not occur after three years have passed from the filing deadline for returns for that particular type of national tax or the date of actual filing of a return claiming a tax refund.[76] For these purposes, 'corrections' include recorrections except those relating to determinations. If the return was filed after the deadline, corrections may occur up to three years after the deadline or up to two years after the date of actual filing, whichever is the later. For national taxes requiring filing by the taxpayer of a taxable base return on the basis of which the tax authorities administratively assess tax, the three year period applies from the filing date of the return, not from the date when the amount of the tax debt is later assessed.[77]

However, corrections may occur up to five years after the relevant statutory deadline in the following four cases:

(a) corrections and administrative assessments that reduce the amount of the tax debt;[78]
(b) corrections that acknowledge or increase the amount of a loss or tax refund;[79]
(c) corrections that decrease the amount of a loss;[80] and
(d) three years after the statutory deadline corrections in relation to returns for national taxes which were filed more than deadline.[81]

In relation to decisions or corrections (and recorrections) based on determinations, these may not

occur after five years have passed from the statutory deadline for filing of self-assessed returns or the deadline for filing of returns (for administratively assessed national taxes requiring a taxable base return) or the date on which the tax obligation arose (for administratively assessed national taxes not requiring a taxable base return). [82]

In relation to cases where fraud or some other improper behaviour is used to evade all or part of a tax obligation or obtain an unjustified tax refund, corrections, determinations and administrative assessments can occur up to seven years from the statutory deadline for filing self-assessed returns, or the deadline for filing taxable base returns or the date on which the tax obligation arises for administratively assessed national taxes.[83]

(2) *Special Limitation Period*

Where certain facts come to light after the expiry of the normal exclusion period, correction, determination or administrative assessment can occur in special circumstances. In particular, corrections, determinations, etc. to alter an original disposition as the result of an administrative or judicial review, or to alter the taxable base or the amount of the tax debt as the result of a request for correction, can be made up to six months from the date of the adjudication, judgment, etc.[84]

For self-assessed national taxes, where a taxpayer has treated an invalid event[85] as a valid taxable event, any correction that is necessary to take into account the nullification of the invalid event or any penalty tax assessed in accordance with that correction can be made up to three years from the date of the nullification.[86]

4.2.5. Inductive Assessment (*Suikei Kazei*)

(1) *Why is Inductive Assessment Necessary*?

Under the self-assessment system, the basic principle is that the amount of the tax debt is assessed by the return of the taxpayer, but where this is not possible assessment is conducted by the tax authorities. However, even in the latter case, the correction or determination must be based on data from the books, records and other documents of the taxpayer. Where this is not possible, the tax authorities may have to rely on inductive calculations.[87] Inductive calculations are not permitted for blue returns.

Inductive calculation of tax debt is therefore a mode of correction or determination that is an exception to the principle of assessment based on actual income.

(2) *The Elements Required for Inductive Assessment*

Inductive assessment is permissible only where one of the following conditions is satisfied :

(a) the taxpayer has not maintained books, records or other documents, so that it is not possible to isolate actual figures for income and expenditure;

(b) the taxpayer has maintained books, records and other documents, but they are inaccurate and unreliable: or

(c) it is not possible to isolate actual figures for income and expenditure because the taxpayer is being uncooperative towards an audit.

(3) *Methods of lnduction*

Inductive calculations are conducted by the following methods.

(a) The taxpayer's assets at the start and end of the tax period are compared, and the increase is taken to be income.

(b) Figures for incoming stock, turnover, profit, etc. for a particular time period are extrapolated to cover the whole tax period, based on patterns of those with similar income and those in the same industry, to arrive at a figure for income for the tax period.

(c) Figures from surveys of similar businesses for electricity use, employee costs, number of sales, etc. are scaled up or down to calculate a figure for income during the appropriate tax period.

(4) *The Reasonableness of Inductive Assessment*

Even where inductive assessment is necessary, it must be conducted reasonably and fairly. Both judicial precedent and academic commentary have reached this conclusion from the fact that inductive assessment is an irregular method of assessment.

For instance, where there are multiple sources from which income could be calculated, the source that most accurately reflects true income should be relied on: where extrapolation is used, the multiplication factors used should be fair and reasonable.

Where making calculations based on similar businesses, the scope and nature of the businesses relied on should be used to form objective criteria which are revealed to the taxpayer, given that such standards should really be set out in legislation. Any special features of the taxpayer's business should be taken into account. The reasonableness of inductive assessment is the matter most often litigated in tax litigation.[88]

4.2.6. Penalty Taxes

Penalty taxes are a form of administrative sanction applied under the self-assessment system in the form of a tax to taxpayers who have not appropriately performed their taxpaying duties. Penalty tax also applies to those responsible for collecting withholding tax .

There are four types of penalty tax.

(I) *Penalty Tax for Short Return* (Kasho Shinkoku Kasanzei)

This penalty tax is imposed where the taxpayer has filed a return by the relevant deadline, but the amount of the tax debt assessed is too low, with the result that a revised return or correction is required. The amount of the penalty tax in this case is 10% of the correct amount of the tax debt.[89]

Note that when the correct amount of tax exceeds that assessed by the taxpayer, and in addition the correct amount is greater than ¥500,000, an additional penalty tax of 5% is imposed on the amount by which the correct amount exceeds the amount originally assessed.

However, where a revised return is submitted, penalty tax will not be imposed where the revised return was not submitted with the knowledge that a correction would be required if an audit was conducted into that taxpayer's tax debt in relation to that type of national tax.[90]

(2) *Penalty Tax for No Return* (Mushinkoku Kasanzei)

This penalty tax is imposed where there was a determination disposition or where a late return (including a revised return relating to a late return, a revised return subsequent to a correction based on a late return, a revised return subsequent to a determination, *etc.*) was filed. The amount of the tax is 15% of the unpaid tax debt when a determination disposition is issued, and 5% in the case of a late return.[91] However, where the late return is filed with knowledge of an impending correction or determination based on an audit, the tax is 15% of the unpaid tax debt.[92]

(3) *Penalty Tax for Non-payment of Tax* (Funofu Kasanzei)

This penalty tax is imposed in relation to national taxes, for instance those paid by withholding tax, where the person responsible for payment has not paid by the relevant statutory deadline. In this case, the penalty tax is 10% of the unpaid amount.[93]

However, where the national tax, such as the withholding tax, is paid after the relevant statutory deadline but without receiving any demand for payment, if the payment is made without the expectation that a demand would have been issued if there had been an audit into that national tax debt, then the penalty tax is only 5% of the unpaid tax debt.[94]

(4) *Heavy Penalty Tax* (Jukasanzei)

This penalty tax is levied where any of the other heads of penalty tax could have been levied, and in addition the taxpayer has falsified or disguised all or part of the facts on which calculation of the tax debt is based, or has submitted a return based on falsified or disguised facts, and has not submitted a return by the relevant deadline or has not payed withholding tax by the relevant statutory deadline.[95] The rates of penalty tax are 35% of the tax debt for under-declaration, 40% for failure to submit a return, and 35% for nonpayment.

Heavy penalty tax does not apply to consumption tax.[96] As an indirect national tax,consumption tax is enforced through a system of notification procedures (*tsusoku shobun*). [97]

Type of penalty Tax	Reason for Imposition		Rate
Penalty Tax for Short Return	where a revised return has been submitted or a correction has occurred		10%
		where the correct tax amount is greater than ¥500,000	5% of the di fference between the correct tax amount and the original assessment
	where a return has been submitted with no expectation of a correction		0
	where there is a valid reason for under-declaration		0
Penalty Tax for Non-payment of Tax	where national taxes such as witnholding taxes are not paid in full by the appointed deadline		10%
	where payment was made with no expectation of a Notification of Tax Obligation		5%
	where there is a valid reason for the failure to pay the witnholding tax		0
Heavy Penalty Tax	where a return is filed, payment is made, *etc*. by concealing or disguising the facts	where imposed in place of Penalty Tax for Short Return	35%
		where imposed in place of Penalty Tax for No Return	40%
		where imposed in place of Penalty Tax for Non-payment of Tax	35%

4.2.7. Duty to Keep Books and Records (*Kicho Gimu*)

Corporations and certain individuals who earn business oriented incomes have a duty to keep books and records.[98]

The tax gap[99] caused by non-compliance by business oriented income earners is estimated as being much higher than that for employment income eaners. The duty to keep records was introduced in the 1984 amendments to the tax system in an attempt to resolve the disparity between the two types of income earners by closing the tax gap.

The tax authorities have expanded the requirement to keep books and records, by requiring a higher degree of documentation than expressed in legislation for the Itemization of Income and Expenditure (*shushi-uchiwakesho*) that must accompany ordinary white returns.

On the other hand, there are no penalties if one breaches the duty to keep books and records, so the enforceability of the duty has been called into question.

4.2.8. Complaints Resolution Mechanisms

(1) *The National Tax Administration*

Complaints about tax administration are handled by the Offices of Tax Counsellors (*zeimu-s6danshitsu*) at each location of the National Tax Administration and at branch offices at each Tax Office.

Complaints handled by these Offices include "complaints into dispositions of the Commissioner of the National Tax Administration, the Regional Commissioner of the Regional Taxation Bureau, the Director of the Tax Office, or any employee tax officials (including failure to act or activities that do not amount to dispositions), as well as these officials' execution of their official duties and other general tax administration matters " ,[100]

Complaints can be lodged orally or in writing, and there are no provisions governing their format.

Few complaints are made by these means - 767 cases in 1990, 734 in 1991 and 873 in l992.[101]

Complaints can also be made to the Tax Office or the Regional Taxation Bureau about which the complaint is being made, but this is not provided for in legislation. There are no data on the number of complaints made in this way, but in fact many taxpayers express their grievances in this unofficial form.

(2) *Administrative Problem Resolution Program* (Gyosei Sodan Seido) *of the Management and Coordination Agency*

The Management and Coordination Agency (*Somucho),* as a kind of coordinating investigative institution for all administrative bodies, has established an Administrative Problem Resolution Program to deal with complaints received from the public in relation to the operation of the various administrative institutions.

Complaints against various fields of administrative activity can be filed under this program. For more detail, see **13.1.**

4.2.9. The Format of Returns and Computer-Assisted Accounting

Returns must be made in paper format, not for instance on floppy disk or in electronic format .

In relation to corporation tax, the format to be used for submission of returns is laid out expressly by law.[102]

For income tax, consumption tax and inheritance tax, the format to be used in presenting the required information is not specified. However, the tax authorities produce standard return forms for uniformity, and in practice these forms are always used. Furthermore, there is nothing in the provisions governing income tax, consumption tax or inheritance tax that requires the taxpayer to affix his or her seal or signature to the return,[103] but there is a spot on the standard form for the seal to be affixed and the tax authorities will always ask for a seal to be affixed.

Computer-assisted accounting methods are in the domain of the individual taxpayer, and have nothing to do with the tax authorities. However, the tax authorities do not officially recognise accounting documents on disk, so the taxpayer must print out these records and store them in hard copy.

4.2.10. Services for the Taxpayer

(1) *Tax Advice*

Taxpayers can obtain advice on tax matters from the responsible section of the Tax Office, either by telephone or by interview.

Larger Tax Offices will contain a local office of the Regional Taxation Bureau's Office of Tax Counsellors, which is also available for advice by telephone or interview.

Each office of the Regional Taxation Bureau will have a permanent Office of Tax Counsellors, manned by experienced advisers who can be consulted by telephone or interview. The Tax Counsellors Office is frequently referred to by tax specialists.

All these advisory services can be consulted without revealing one 's identity. Advice from these services will not be committed to writing.
These advisory services are not considered to be providing the official opinions of the tax authorities, but are merely providing information for the convenience of the taxpayer. [104] Consequently, the answers received through the advisory services are not legally binding on the tax authorities. However, in practice they can be used as guiding principles.

(2) *The 'Tax Answer ' Telephone Service*

The tax authorities provide a computerized message service containing tax advice on a number of preset topics. The response to the caller's question is sent by synthesized voice or by fax.

The service operates between 6 a.m. and midnight daily. In Tokyo, the number to call is (03) 3213-2222.

(3) *Photocopying of Returns and Perusal*

In principle, photocopying is not provided for the taxpayer.
Taxpayers or their appointed representatives may peruse their own past tax returns at the offices of the appropriate Tax Office. However, as photocopying is not provided, taxpayers must copy any required information by hand.

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1 *Shotokuzei Ho* (Law No. 33 of 1965)

2 *Hojiinlei Ho* (Law No. 34 of 1965).

3 *Shohizei Ho* (Law No, 108 of 1988).

4 *Sozokuzei Ho* (Law No. 73 of 1950).

5 For a detailed analysis of these categories, see Kitano, Hirohisa (ed.), *Legal Justification of the Power to Inquire and Examine* [Shitsumon-kensa-ken no Hori] (1974).

6 *Kokuzei Choshu Ho* (Law No. 147 of 1959).

7 *Kokuzei Hansoku Torishimari Ho* (Law No. 67 of 1900).

8 For examples, see Kitano, Hirohisa, The Structure of Contemporary Tax Law [Gendai Zeiho no Kozo](1972), at 321 ff.

9 See Ishimura, Koji, Charters of Taxpayers' Rights in Developed Countries [Senshin-shokoku no Nozeisha Kenri Kensho] (1993), at 28 and 50 ff.

10 National Tax Administration [Kokuzeicho], *Annual Report N0.41* [Jimu Nenpo Dai-41-kai] (1993), at 25; National Tax Administration [Kokuzeicho], *Annual Report No.42* [Jimu Nenpo Dai-42-kai] (1994), at 29.

11 The *ex post facto* disposition is a form of audit for taxpayers who have made an error in the amount of the tax debt calculated in the return or who have not submitted a return where they were required to do so. It is conducted by discussions with the taxpayer either by interview at the offices of the relevant tax authority or over the telephone.

12 National Tax Administration, Annual Report No.41, *supra* n.10, at 15.

13 National Tax Administration Annual Report No 42,*supra* n.10, at 17.

14 National Tax Administration [Kokuzeicho] (ed.), 118th *Comprehensive Statistical Report of the National Tax Administration* [Dai-ll8-kai Kokuzeicho Sokei Nenp6sho] (1994), at 9.

15 Ibid., at 7.

16 KSK System stands for *Kokuzei Sogo Kanri* [National Taxes Comprehensive Management] System. The computer-based KSK System is due to be fully operational by 1996. For a detailed analysis of the KSK System, see Chapter 12.

17 Tokyo *Zeirishi* Association Training Department [Tokyo Zeirishikai Shido-kenshubu], 'A Survey of the Actual Situation of Tax Audits' (1994) 453 *Tokyo Zeirishi Kai* [Tokyo *Zeirishi* Circles] 2.

l8 According to the survey of Tokyo *Zeirishi* Association members, such extended audits (including clients, suppliers, etc.) occurred in 17.7% of audits into corporation tax matters, and 9.3% of audits into individual income tax matters. Ibid.

19 According to the survey of Tokyo *Zeirishi* Association members, examination of bank accounts of company personnel and their families occurred in l0.5% of audits.

20According to the survey of Tokyo *Zeirishi* Association members, examination of cash holdings or bank accounts occurred in 36.3% of audits.

21 Of those earning income from business, 1,420.000 (57.7%) filed blue returns, while 1,040,000 (42.3%) filed white returns. See National Tax Administration, *118th Comprehensive Statistical Report, supra* n.14, at 51 and 53.

22According to the survey of Tokyo *Zeirishi* Association members, examination of cash holdings or bank accounts occurred in 44.2% of audits, and extended audit of financial organizations in 37.8% of audits.

23 In the Tokyo office of the Regional Taxation Bureau, personnel has gone up from l99 in 1989 to 260 in 1993, an increase of 30%. See Tokyo *Zeirishi* Association [Tokyo Zeirishikai], *List of Tax-Related Personnel* [Zeimu Shokuin Meibo] (1993).

24 However, where a taxpayer's affairs are handled by a *zeirishi,* Article 34 of the *Zeirishi Law* [Zeirishi Ho] (Law No.237 of 1951) requires that any notification of audit to the taxpayer also be sent to the *zeirishi*.

25 National Tax Administration [Kokuzeicho], ' Tax Administration Initiatives', in National Tax Administration [Kokuzeicho] (ed.), *Annual Report No .26* [Jimu Nenpo Dai-26-kai] (1976). This is a reproduction of an internal circular outlining policies in relation to the operation of tax administration for Tax Office personnel. Tax Office personnel are bound by the circular. The circular is reproduced in this volume as Appendix 3 .

26 ln relation to assessment audits, there are no provisions as to date or time. However, compulsory audits under the National Taxes Collection Law "may not occur between sundown and sunrise" (Article 143). A similar provision is found in the National Taxes Infringement Control Law Article 8.

27 ln Japan v. *Tome,* the Kobe District Court stated that "The acts by the tax authorities in attending the defendant's house to begin an audit at 7:50 a.m. when he was about to leave for work was conduct contrary to common sense in terms of timing and attitude" (November 18, 1976, 98 *Zeimu Sosho Shiryo* 2) and denied the establishment of the criminal offence of obstructing an audit. See also *Japan v. Nakano Minshu Shokokai* (Tokyo District Court, January 30, 1968) 507 *Hanrei Jiho* 9.

28 lncome Tax Law Article 234; Corporation Tax Law Articles 153 and 154; Inheritance Tax Law Article 60; Consumption Tax Law Article 62; *etc.*

29 *Japan v. Hirota* (Supreme Court, July 10, 1973) 27(7) Keishu 1205. This requirement of objective necessity can also be applied to extended audits of financial institutions with which the taxpayer conducts transactions. The Tokyo High Court has said that "The timing and extent of extended audits should be seen as falling within the selection of the relevant tax officials, provided that there is objective necessity in light of the circumstances and provided that the boundaries of socially acceptable behaviour are not crossed": Tokyo Sangyo Co. v. Director of Atsugi Tax Office (January 29, 1986) 150 *Zeanu Sosho Shiryo* 73 .

30 *Japan v. A Taxpayer o.f Shizuoka City* (Shizuoka District Court, February 9, 1972) 659 *Hanrei Jiho* 36.

31 *Tokyo Sangyo Co. v. Director of Atsugi Tax Office, supra* n.29.

32 Income Tax Law Article 236; *etc.*

33 See Corporation Tax Law Article 153.

34 Income Tax Law Article 234(1)(i).

35 Income Tax Law Article 234(1)(ii).

36 Income Tax Law Article 234(1)(iii).

37 The Corporation Tax Law provides for such extended audits in Article 154.

38 The development of photocopying technology is creating myriad new problems with the concept of "confiscation". For example:

(a) it is not uncommon for tax officials to request cooperation in copying books, records or other documents, and to then remove the copies to the Tax Office;
(b) there are cases where tax officials have brought their own photocopying machine to the audit, with which they freely take copies which they then remove;
(c) in some cases tax officials have gained permission of the person being audited to remove books, records and other documents to the Tax Office for copying, but have then retained them.

39 See National Tax Administration [Kokuzeicho] (ed.), *Legal Knowledge of Tax Audits* [Zeimu Chosa no Horitsuteki Chishiki] (1972), at 6 (Question 10). In contrast to this view of the National Tax Administration, the prevalent academic opinion is that "If the upshot of this statement is that entry is possible without the assent of the person under audit, then it is wrong" Miki, Yoshikazu, Practical Dictionary of Tax Procedural Law [Sozei Tetsuzuki Ho Katsuyo Jiten] (1988), at 25. See also Kitano, Hirohisa, *Principles of Tax Law <Third Edition>* [Zeihogaku Genron <Daisanpan>] (1992), at 332.

40 See Hayashi, Shuzo, *Execution of Duties in Drafting* [Hosei Shitsumu] (1978), at 110.

41 *Kokka Baisho Ho* (Law No. 125 of 1947).

42 *Japan v. Kobataka* (Supreme Court, December l0, 1988) 35(6) *Shomu Geppo* 979.

43 Corporation Tax Law Article 156; Income Tax Law Article 234(2).

44 For a similar view, see Miki, *supra* n.39, at 28; and Japan Federation of Young Zeirishi Associations [Zenkoku Seinen Zeirishi Renmei] (ed.), *Taxpayers ' Rights in Relation to Tax Audits* (*Revised Newest Edition*) [Zeimu Chosa ni okeru Nozeisha no Kenri (Kaitei Saishinpan)] (1992), at 31 .

45 lncome Tax Law Article 242; Corporation Tax Law Article 162; Consumption Tax Law Article 67; *etc.*

46 lncome Tax Law Article 234; Corporation Tax Law Article 154; Consumption Tax Law Article 62(1)(iii); *etc.*

47 lnheritance Tax Law Article 60(1)(v).

48 Corporation Tax Law Article 156-2; Income Tax Law Article 235(2); Inheritance Tax Law Article 60-2; Consumption Tax Law Article 63; *etc.*

49 See **2.1.** above.

50 According to the survey of members of the Tokyo *Zeirishi* Association (*supra* n.17), 24.2% of audits concluded in confirmation of the return (in 1993).

51 According to the survey, 54.4% of audits (in 1993) 1ed to a revised return being submitted.

52 According to the survey, the percentage of total audits that went on to correction in 1993 was 2.l%.

53 Tax laws do recognize the possibility of conducting an audit before submission of a return in exceptional cases. Examples are where there has been a request for reduction of provisional tax, where there has been a request for submission of a blue return and where the locus of payment is specified. Therefore, apart from such exceptional cases, it is not possible to conduct a preliminary audit before the passing of the deadline for submission of the return.

54 Corporation Tax Law Article 156; Income Tax Law Article 234(2); Inheritance Tax Law Article 60(4); Consumption Tax Law Article 62(5); *etc.*

55 Corporation Tax Law Article 162; Income Tax Law Article 242; Inheritance Tax Law Article 68. The amount of the fine is "up to ¥l00,000" under Consumption Tax Law Article 68.

56 Corporation Tax Law Article 162(2); Income Tax Law Article 242(8); Inheritance Tax Law Articles 70(2), (4) and (5); Consumption Tax Law Article 68(i).

57 Corporation Tax Law Article 162(3); Income Tax Law Article 242(9); Inheritance Tax Law Article 70(3); Consumption Tax Law Article 68(ii).

58 Corporation Tax Law Article 153; Income Tax Law Article 234; Inheritance Tax Law Article 60; Consumption Tax Law Article 62; *etc.*

59 For details of the situation in developed countries and comparison with Japan, see Ishimura, *supra* n.9.

60 National Public Servants Law [*Kokka Komuin Ho*] (Law No. 120 of 1947) Article l00(1); Local Public Servants Law [*Chiho Komuin Ho*] (Law No. 261 of 1950) Article 34(1).

6l National Public Servants Law Article 109(xii); Local Public Servants Law Article 60(ii).

62 Income Tax Law Article 243. For similar provisions, see Corporation Tax Law Article 163, Inheritance Tax Law Article 72, Consumption Tax Law Article 69 and Local Tax Law Article 22.

63 Extra-1egal inquiries can be taken as one form of the purely voluntary audit conducted through administrative guidance.

64 National Taxes Infringement Control Law Article 2(1).

65 National Taxes Collection Law Article 141.

66 National Taxes Collection Law Article 188.

67 National Taxes Collection Law Article 142.

68 Income Tax Law Articles 143 and 166; Corporation Tax Law Articles 121 and 146.

69 Corporation Tax Law Article 126; Income Tax Law Article 148.

70 Corporation Tax Law Article 130; Income Tax Law Article 155.

71 Corporation Tax Law Article 130(2); Income Tax Law Article 155(2).

72 For example, see *Udono v. Commissioner of Tokyo Regional Taxation Bureau* (Supreme Court, May 31 , 1963) 17(4) *Minshu* 617.

73 Corporation Tax Law Article 127(1). ; Income Tax Law Article 150(1).

74 National Taxes Common Provisions Law Article 24.

75 National Taxes Common Provisions Law Article 26.

76 National Taxes Common Provisions Law Article 70(1)(i).

77 National Taxes Common Provisions Law Article 70(1)(ii).

78 National Taxes Common Provisions Law Article 70(2)(i).

79 National Taxes Common Provisions Law Article 70(2)(ii).

80 National Taxes Common Provisions Law Article 70(2)(iii).
8l National Taxes Common Provisions Law Article 70(2)(iv).

82 National Taxes Common Provisions Law Article 70(3)(iv).

83 National Taxes Common Provisions Law Article 70(5).

84 National Taxes Common Provisions Law Article 71(i).

85 For examples of this type of event, see Civil Code [*Minpo*] (Law No. 89 of 1898) Articles 90, 93, 95, *etc.*

86 National Taxes Common Provisions Law Article 71 (ii).

87 Corporation Tax Law Article 131; Income Tax Law Article 156.

88 For a detailed analysis of the necessity and reasonableness of indirect methods of proving income from the aspect of tax litigation, see Tsurumi, Yusaku, 'The Burden of Proof in Tax Litigation', in Kitano, Hirohisa (ed.), 4 *Treatise on Taxation Law* [Nihon Zeiho Taikei] (1980) 302, at 313 ff.

89 National Taxes Common Provisions Law Article 65(1).

90 National Taxes Common Provisions Law Article 65(5).

9l National Taxes Common Provisions Law Article 66(1).

92 National Taxes Common Provisions Law Article 66(3)

93 National Taxes Common Provisions Law Article 67(1)

94 National Taxes Common Provisions Law Article 67(2).

95 National Taxes Common Provisions Law Article 68.

96 National Taxes Common Provisions Law Article 68(4).

97 National Taxes Infringement Control Law Article 14.

98 Corporation Tax Law Article 150-2; Income Tax Law Article 231-2.

99 The 'tax gap ' is the estimate of difference between the actual amount of tax voluntarily paid in any tax year and the amount of taxes that would have been paid if taxpayers had all filed complete and accurate returns.

100 Ministy of Finance Organization Ordinance [*Okurasho Soshiki Kitei*] (Ministy of Finance Ordinance No. 37 of 1949) Article 120-4(2).

101 National Tax Administration, 118th Comprehensive Statistical Report, supra n. 14, at 203. One reason why there are so few complaints is that there is very little publicity that the Offices of Tax Counsellors handle such complaints.

l02 Corporation Tax Law Enforcement Regulations [*Hojinzei Ho Seko-kisoku*] (Ministry of Finance Ordinance No. 12 of 1965) Article 34(2).

l03 Income Tax Law Enforcement Regulations [*Shotokuzei Ho Seko-kisoku*] (Ministry of Finance Ordinance No.11 of 1965) Article 47(i); Consumption Tax Law Enforcement Regulations [*Shohizei Ho Seko-kisoku*] (Ministry of Finance Ordinance No. 50 of 1988) Article 22(2); Inheritance Tax Law Enforcement Order [*Sozokuzei Ho Sekorei*] (Cabinet Order No. 71 of 1951) Article 5(iii).

l04 *Kimura v. Director of Yokosuga Tax Office* (Yokohama District Court, December 23, 1987) 34(8) Shomu Geppo 1741.

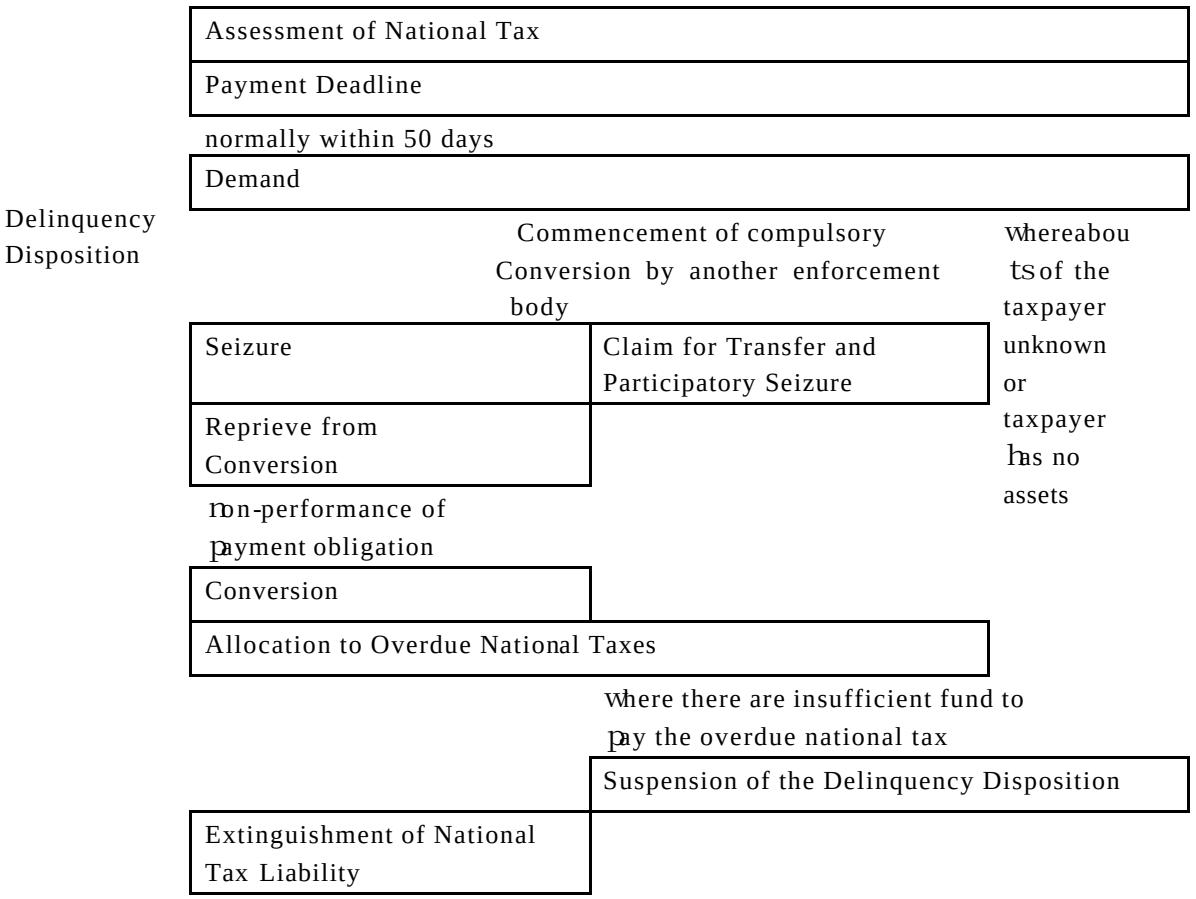
<table>
<tr><td colspan="3"></td><td>Regular limitation period</td><td>lrregularitie s such as fraud</td></tr>
<tr><td rowspan="5">upward correction</td><td colspan="2">correction subsequent to a timely return</td><td>3 years</td><td rowspan="5">7 years</td></tr>
<tr><td rowspan="2">correction subsequent to an untimely retum</td><td>correction in relation to a return filed within 3 years of the statutory filing deadline</td><td>whichever is the later of 3 years or 2 years after the submission date</td></tr>
<tr><td>correction in relation to a retum filed more than 3 years after the statutory filing deadline</td><td>5 years</td></tr>
<tr><td colspan="2">correction subsequent to a determination</td><td>5 years</td></tr>
<tr><td colspan="2">correction which decreases the amount of' loss</td><td>5 years</td></tr>
<tr><td colspan="3">downward correction (including corrections that increase the amount of loss)</td><td>5 years</td><td>n.a.</td></tr>
<tr><td colspan="3">determinations</td><td>5 years</td><td>7 years</td></tr>
</table>

Chapter 5
Tax Collection Procedures

5.1. Outline

Where taxpayers voluntarily perform their assessed tax obligations within the prescribed period, payment is made through Regular Payment Procedures (*nôfu tetsuzuki*). Where the taxpayer does not make the payment voluntarily, measures to seek performance of the obligations are referred to as Collection Procedures (*chôshû tetsuzuki*). Collection procedures include notifications of tax obligation, calls for payment, demands and delinquency dispositions, as well as the related acts of administrative bodies such as special collection measures and measures relaxing payment obligations.

Figure 5-1: Flow Chart of Delinquency Dispositions for National Taxes



An overview of the steps from payment to collection to tax refund is provided below: details will be found in later sections.

(1) *Assessment of the Amount to be Paid*

As stated in the previous chapter, the procedures to calculate the amount of tax owed are very different in a self-assessment system and an administrative assessment system, but in either case assessment (kakutei) is the first step in the collection process.

(2) *Payment* (Nôzei)

The assessed amount of tax is to be paid within the prescribed period.

(3) *Demand*

If the amount is not paid in full within the prescribed period, the relevant tax authority makes a demand (*tokusoku*). The demand has the effect of making a call for payment, and is a precondition to seizure.

(4) *Seizure*
If the full amount is not paid within a certain period after the demand and no grace period has been granted, seizure of assets (*sashiosae*) may occur. Dealings with the seized property by the defaulter are prohibited and the property is prepared for conversion into currency. Seizure is the first step in a delinquency disposition.

(5) *Conversion* (Kanka)

Where the seized property is something other than money or a debt that can be called in, the property is sold at public auction and the funds are allocated to payment of the overdue taxes.

(6) *Allocation* (Haitô)

The funds from the public sale of the defaulter's assets are allocated to pay obligations of national, local or other tax. Any surplus is returned to the defaulter.

(7) *Claim for Transfer and Participatory Seizure*

Where a defaulter's property has already been seized due to default on another tax debt and conversion to currency has commenced, a Claim for Transfer (*kôfu yôkyû*) is issued to allocate funds from that conversion to satisfaction of the tax debts in question, rather than going through separate seizure and conversion procedures. Participatory Seizure (*sanka sashiosae*) is a type of claim for transfer: as well as being allocated funds from the sale under the prior seizure, it is possible to seize the assets if the prior seizure is terminated for whatever reason.

5.2. Payment of Taxes

5.2.1. Regular Payment Procedures

Regular payment procedures (*nôfu tetsuzuki*) are steps taken to satisfy within the prescribed period the taxpayer's tax obligations, as assessed through the relevant procedures. Payment procedures can be divided into voluntary payment and payment upon receipt of notification. Taxes can be paid in Japanese currency or by cheque,[1] by presentation of a Statement of Payment (*nôfusho*) or a Notification of Tax Obligation (*nôfu kokuchisho*) at the Bank of Japan, a National Tax Collection Representative Office (normally financial institutions such as banks), Post Offices, Tax Offices, etc. Alternatively, as one kind of cash payment, the taxpayer may transfer funds direct from his or her savings account.[2] Payment may also be made with duty stamps. In the case of

inheritance tax, where it may be difficult to make the payment in cash, the taxpayer may request payment in another form such as national bonds, real estate, *etc.*[3]

Payment obligations are normally met by the primary or secondary taxpayer,[4] or the withholding tax collector, but it is also permissible for an uninterested third party to perform tax-paying obligations.[5]

5.2.2. Time Limit for Payment

The date by which tax obligations must be met is known as the Payment Deadline (*nôkigen*). For certain national taxes the payment deadline is set out in tax legislation and is known as a Legislative Payment Deadline (*hôtei nokigen*). The deadlines set for deferred payment or a grace period are not considered as legislative payment deadlines.[6] The legislative payment deadline is the commencement date for counting the limitations period for enforcement of the tax obligation.[7] The day after the legislative payment deadline is the commencement date for calculating delinquency taxes.[8] For most taxes the taxpayer has the right to delay payment until the deadline, and the tax authorities may not impinge upon the period, but payment before the deadline is encouraged for local taxes such as the municipal inhabitant tax and the fixed assets tax, with rewards being offered for early payment.[9] However, these are the only cases where rewards are offered.

The legislative payment deadlines for the various heads of tax are set out in Figure 5-2 below.[10]

Figure 5-2: Overview of Payment Deadlines and Supplementary Taxes

5.2.3. Delinquency Tax

Where the taxpayer does not pay a national tax debt by the legislative payment deadline, a delinquency tax (*entaizei*) amounting to interest for late payment is levied, out of fairness to taxpayers who did pay on time and to encourage payment by the deadline.[11]

Delinquency tax is calculated from the day after the deadline to the date that payment is completed in full, and the rate is 14.6% *per annum* on the unpaid portion. However, the rate is 7.3% *per annum* if payment occurs within two months of the deadline.[12]

5.2.4. Locus of Payment

The place from which payment should be made is known as the Locus of Payment (*nôzeichi*). In the case of an individual, this locus should be the permanent address, the residential address or the office address.[13] In the case of domestic corporations, the locus is the main office or the main place of business,[14] while for foreign corporations it is the Japanese office.[15]

5.3. Relaxation of Payment Obligations and Grace Periods

The taxpayer has an obligation to pay tax by the deadline, but where it is not appropriate to enforce payment due to the nature of the tax or the taxpayer's financial situation and provided that certain conditions are satisfied, the taxpayer may request the relaxation of collection procedures and the application of assistance measures.

5.3.1. Extension of the Payment Deadline

It is possible to extend the legislative payment deadline by a set period for indirect national taxes such as consumption tax, liquor tax, tobacco tax or gasoline tax.[16] The rationale here is that payment of indirect taxes often occurs out of the proceeds of selling the taxed articles - collection of these proceeds can take some time.[17] The extension can be up to three months for the consumption tax, up to one month for the liquor tax and tobacco tax, and up to two months for the gasoline tax.

5.3.2. Deferred Payment

Deferred payment (*ennô*) is permitted for income tax, inheritance tax and gift tax provided certain conditions are met. For instance, for inheritance tax of over ¥100,000, the taxpayer may be granted a deferment by the Director of the Tax Office if he or she can offer security.[18] The maximum period of deferment is 20 years. For gift tax, the maximum is five years.[19]

5.3.3. Grace Period for Payment

Where a taxpayer has insufficient funds to pay tax, the Director of the Tax Office or the Regional Commissioner of the Regional Taxation Bureau may, upon request from the taxpayer, approve delay in the performance of tax obligations beyond the regular deadline.
This system applies equally to national and local taxes.[20] Grace periods (*yûyo*) are recognized for disasters, illness or closure of business, and delayed assessment. The Director or Regional Commissioner who determines the acceptance or refusal of the taxpayer's request and the length of the grace period must notify these details to the taxpayer.[21]

(1) *Grace Period for Disaster*

Where the taxpayer suffers considerable loss to property due to fire or other disaster between the end of the tax period and the payment deadline, a grace period for payment is applied without separate screening of the taxpayer's ability to pay.[22]

Where the loss is more than 50% of the taxpayer's total assets, the grace period is up to one year. Where the loss is between 20% and 50% of the taxpayer's assets, the grace period is up to eight months. The period will be determined in each case depending on the severity of the loss.

The grace period is relevant to the following taxes:

(a) national taxes (excluding consumption taxes[23]) in relation to which tax liability has already arisen, the payment deadline fell after the date of suffering the loss, and the amount to be paid has been assessed before application is made for the grace period;
(b) national consumption tax on transfer of taxable assets in relation to which the tax period transpired before the last day of the disaster, the payment deadline fell after the date of suffering the loss, and the amount to be paid has been assessed before application is made for the grace period;

(c) provisional income tax and other national taxes as specified in cabinet orders, the payment deadline for which falls after the date of suffering the loss.

Application for the grace period is through submission of the appropriate form to the Director or Regional Commissioner within two months of the cessation of the disaster.[24]

(2) *Grace Period for Illness, Closure of Business,* etc

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Where a taxpayer cannot pay all his or her national tax in one lump sum due to acts of god such as earthquakes or storms or floods, theft, illness, injury, closure of business, extraordinary business loss, etc., he or she may apply for a grace period of up to one year on the amount that cannot be paid immediately. Where taxpayers who have been granted a grace period for disaster are not able to pay their national taxes at one time, they may receive similar treatment.[25]

(3) *Grace Period due to Delayed Assessment*

When assessment of the amount of tax owing is delayed by more than one year from the normal time and the taxpayer is not able to pay the full amount in one lump sum, a grace period of up to one year may be granted. In this case, application should be made before the payment deadline for the head of tax for which relief is required, but the Director or Regional Commissioner has the discretion to permit application after the deadline in special circumstances.[26]

(4) *Extension of the Grace Period*

Where a taxpayer has been granted a grace period for illness or closure of business, or due to delayed assessment, but still has some valid reason why he or she cannot satisfy the tax liability, the taxpayer may request the Director of the Tax Office to further extend the time for payment. However, the total grace period may not exceed two years.[27]

(5) *The Effect of the Grace Period*

Where a grace period is granted in relation to certain taxes, it is not possible to issue a new demand or issue a delinquency disposition for those taxes as long as the grace period is in force.[28] Where property has already been seized in relation to those taxes, the seizure will be terminated at the request of the taxpayer.[29] Note, however, that where the seized property is fresh produce or other perishable assets, the authorities may elect to sell the property and apply the proceeds to satisfaction of the tax debt for which the grace period has been granted.[30] Furthermore, payment on debts owed to the taxpayer can be applied to the tax debt.[31] Payment of delinquency tax is waived in whole or in part in relation to the grace period.[32]

(6) *Other Grace Periods*

There is also provision for relief in relation to farmland for gift tax[33] and inheritance tax.[34] In the scheme of the National Taxes Common Provisions Law, these types of relief are viewed as deferred payment rather than grace periods.[35]

5.3.4. Reprieve from Conversion (*Kanka no Yûyo*)

It is possible for the tax authorities to seize and sell the property of a tax defaulter, but where there is the risk that this would cause difficulties in the continuation of a business or the maintenance of normal living standards or alternatively where it is beneficial to the tax authorities to do so, the Director of the Tax Office may grant a reprieve against conversion to currency in relation to that property and that particular head of tax. It must be apparent that the defaulter has a sincere intention to pay the taxes that he or she owes. The grace period is up to one year. Where such a reprieve is granted, a reprieve may also be granted from the previous step of seizure where considered necessary: previously seized property may be released.[36]

5.3.5. Suspension of the Delinquency Disposition

Where a delinquency disposition (tainô shobun) has been issued but this would cause undue hardship to the defaulter, it is possible to suspend performance of the disposition. Where a disposition is suspended, any property that has been seized must be released. Furthermore, where suspension of the disposition continues for three years, liability for that particular tax is extinguished.[37]

5.4. Security for Relaxation of Payment Obligations

The measures outlined above, namely extension of the payment period (**5.3.1.** above), deferred payment (**5.3.2.** above), grace periods (**5.3.3.** above), reprieve from conversion to currency (**5.3.4.** above) and reprieve from seizure (**5.3.4.** above), can be referred to collectively as relaxation measures. Relaxation of payment obligations generally occurs only when the taxpayer can provide security for eventual payment. Termination of seizure is only possible upon the provision of some security by the taxpayer, but the balance of opinion is that security to ensure collection may not be demanded unless expressly provided for in legislation.[38]

Security may consist of:[39]

(a) national bonds;
(b) local bonds;
(c) company bonds;
(d) land;
(e) buildings;
(f) standing timber that is insured;
(g) the guarantee of an approved guarantor, such as a railway foundation;
(h) currency.

If the existing security decreases in value or becomes insufficient to secure the payment of national taxes for some other reason, the Director or Regional Commissioner may order that further security be provided.[40]

5.4.1. Conversion of the Security and Preservative Security

Where the taxes on which the security is provided are not paid in full by the relevant deadline or the deferred payment or grace period is cancelled, the security may be used

to satisfy the tax liability without a demand or any special notice being issued to the tax payer.[41]

Preservative security (*hozen tanpo*) is a special type of security. Where payment is overdue on consumption taxes other than national consumption tax, preservative security may be required to secure future payment of consumption taxes. It is often the case with consumption taxes that a taxpayer is responsible for regular and repeated payments: if one payment is not made, there is the possibility that this pattern will continue, so preservative security is in place to ensure this does not occur.

5.5. Collection of Taxes

Tax collection is the seeking of performance of the tax liability of a taxpayer by a national or local public body. Collection procedures can be divided broadly into claims and delinquency dispositions.

5.5.1. Notification of Tax Obligation

If the taxpayer does not pay his or her taxes by the legislative payment deadline, the Director of the Tax Office claims payment of the outstanding amount by way of a Notification of Tax Obligation (*nôzei kokuchi*). Notifications are issued in relation to administratively assessed (*i. e.* not self-assessed) national taxes (excluding penalty tax for short return, penalty tax for no return and heavy penalty tax) and national withholding taxes.[42] As a rule, the notification should contain the outstanding amount, the deadline and places where payment can be made.[43] The deadline in the notification is normally one month from the day after the notice is issued.

Notification of tax obligation forms a part of collection procedures, so, as a rule, does not have the effect of assessing tax liability. However, where a taxable base return (*kazei hyôjun shinkokusho*) is filed in relation to administratively assessed national taxes and the amount of the tax debt in the return is the same as the Director of the Tax Office's calculations based on an audit, then the Director issues a notification of tax obligation rather than a Administrative Assessment Notification (*fuka kettei tsûchisho*): this is the exceptional case where the amount of tax to be paid is assessed at the stage of issuing the notification of tax obligation.[44]

A notification of tax obligation suspends the limitations period in relation to the tax liability.[45]

Notifications of tax obligation are also required in collecting local taxes.[46]

5.5.2. Demands

Where the taxpayer does not make full payment by the payment deadline, the act to claim performance of the obligation is known as a Demand (*tokusoku*). A Statement of Demand (*tokusokujô*) is issued once the relevant deadline below has passed:

(a) for self-assessed national taxes, the deadline as appearing in Figure 5-2 above;
(b) for national taxes for which a notification of tax obligation has been issued, the deadline on that notification;

(c) for provisional income tax, the legislative payment deadline.

Where delinquency tax or interest tax is levied on a tax debt for which a demand is issued, the Director of the Tax Office must claim these together with the primary tax debt.

Except where separate provision is made, the statement of demand is issued within 50 days after the relevant deadline (20 days for local taxes).[47] However, the 50 day rule is not a mandatory provision so a statement of demand is not ineffective merely because it was issued more than 50 days after the deadline.[48] A demand has the effect of suspending the limitations period. If full payment has not occurred within 10 days of issuing the statement of demand, the Director of the Tax Office proceeds to seizure of property under a delinquency disposition.[49]

Where payment is required of a guarantor or a secondary taxpayer, the claim is made through a Call for Payment (*nôfu saikokusho*) rather than a statement of demand.[50]

5.6. Immediate Collection

Where it is feared that collection of a tax will become difficult if the taxpayer is allowed the full period until the normal payment deadline, collection may be enforced before the deadline as an exception to the rule. The procedures involved here are Claim for Immediate Collection (*kuriage seikyû*), Immediate Preservative Seizure (*kuriage hozen sashiosae*) and Preservative Seizure (*hozen sashiosae*).

5.6.1. Claim for Immediate Collection

Where it is recognized that the full amount of an outstanding national tax will not be paid in one of the following situations, the Director of the Tax Office may claim acceleration of the collection date:[51]

(a) where compulsory conversion proceedings have been commenced against the taxpayer's property;
(b) where a corporate taxpayer is liquidated;
(c) where a taxpayer ceases to have an address or residence within Japan and has not appointed a tax payment agent; or
(d) where it is recognized that the taxpayer is using deception or other fraudulent means to escape his or her tax liability or the execution of a delinquency disposition.

A Immediate Collection Notice (*kuriage seikyûsho*) is issued to the taxpayer containing details of the outstanding amount, the deadline that is to be accelerated and places where payment can be made. However, in relation to national taxes that are collected through withholding tax (for which a notification of tax obligation is not issued), the claim for immediate collection occurs by delivery of a notification of tax obligation to which the details of the acceleration are attached.[52] Where taxes are not paid by the deadline in the immediate collection notice or the notification of tax obligation, a delinquency disposition will be issued without a demand or any special notice being given to the taxpayer.[53]

5.6.2. Immediate Preservative Seizure

In circumstances where a claim for immediate collection could be made and it is realized that it will not be possible to secure collection of tax after the assessment process, immediate preservative seizure may be used to immediately seize the taxpayer's property up to a limit based on the amount that is likely to be assessed. This limit must be notified to the taxpayer by way of a Statement of Amount for Immediate Preservative Seizure (*kuriage hozen sashiosae kingaku kettei tsûchisho*). If the amount to be paid is not assessed within ten months of issuing this statement, the seizure must be terminated.[54]

5.6.3. Preservative Seizure

This procedure applies to taxpayers who are the subject of seizure, confiscation, sequestration of evidence or arrest under the National Taxes Infringement Control Law[55] or the Code of Criminal Procedure[56] based on the suspicion that they have escaped tax obligations or obtained tax refunds unlawfully. Where it is realized that it will not be possible to secure collection of tax in relation to which such a suspicion arises after the assessment process, the Director of the Tax Office may, before such assessment, immediately seize the taxpayer's property up to a limit based on what is likely to be assessed.[57] This preservative seizure is a system allowing seizure before assessment, so bears a close resemblance to immediate preservative seizure: the difference is that the National Taxes Infringement Control Law does not apply to self-assessed tax and taxes and local withholding taxes until the legislative filing date for the return has passed.[58]

5.7. Delinquency Dispositions

Delinquency dispositions (*tainô shobun*) are procedures used by national or local public bodies to coercively recover a tax debt from a taxpayer regardless of his or her will, where payment has not been completed in spite of a demand being issued. A delinquency disposition consists of procedures such as seizure, conversion to currency, allocation and claim for transfer (including participatory seizure).

5.7.1 The Content of the National Taxes Collection Law

The National Taxes Collection Law is a procedural law governing forcible collection of overdue national taxes. Its aim is to secure the collection of national taxes without disadvantaging others who hold security against the taxpayer. As this Law impacts on the rights of all taxpayers, it is worth outlining its main features.

(1) The Priority of National Taxes

As a rule, national taxes are to be collected in priority to all public levies and private debts.[59] This priority is given to national taxes because they support national finances and form the basis for governmental actions.

There are situations where an absolute application of the priority rule would not be appropriate, so the National Taxes Collection Law allows adjustment of the order of priority in exceptional circumstances, namely:

(a) between national taxes and private debts;[60]
(b) between national taxes and other public levies;[61]
(c) between different national taxes;[62]
(d) between national taxes and local taxes;[63]
(e) under special provisions.[64]

(2) *Power to Enforce Tax Obligations*

In order to ensure satisfaction of national tax debts, tax collection officers are given the power to enforce tax obligations.[65] This power enables tax collection officers to themselves enforce an unsatisfied tax debt through coercive measures such as seizure. By contrast, in relation to private debts, the obligation debtor is forbidden from enforcing the debt by his or her own hands: enforcement is entrusted to the institutions of the justice system .

(3) *Respect for Private Rights*

The priority accorded to tax debts and the power to enforce tax obligations need to be tempered so that private rights are not unnecessarily disturbed. Thus, limits are placed on the priority of tax debts and measures are taken to protect the rights of third parties, in order to maintain a balance between security of national tax debts and respect for the order of private law.

In particular, there are two categories of debts that retain priority over tax debts:

(a) the costs of compulsory conversion to currency,[66] debts secured by lien, and debts secured by rights of priority such as rights over property, [67]
(b) rights of priority such as rights of pledge, hypothecs or leases of immovable property, or obligations secured by provisional registration, provided that they came into existence before the legislative payment deadline or before the date the property was transferred.[68]

Rights of third parties are protected in the following circumstances.

(a) *Property encumbered by third party rights*[69] - Third party rights are to be respected when selecting assets for seizure. Where an asset which is subject to third party rights such as a hypothec is to be seized, and in addition the taxpayer possesses assets over which the third party has no rights which are easily convertible to currency and which would allow retrieval of the entirety of the tax debt, the third party has a right against the Tax Office Director until the day of public sale of the original asset to claim exchange of seized assets. Where the Director of the Tax Office does not approve an exchange of seized assets and notifies the third party as such, the third party has the right to lodge an appeal against conversion to require that the Director seize and convert assets belonging to the delinquent taxpayer. The third party can lodge this appeal up to 7 days after receiving the notification of disapproval. Where such an appeal has been lodged, the Director may not convert the third party's assets except in circumstances where conversion of the delinquent taxpayer's seized assets is extremely difficult.

(b) *Inheritances*[70] _ In a case of succession where the Collection Officer must seize

the heir's assets in relation to national taxes owed by the deceased, provided there is no impediment to the enforcement of a delinquency disposition, initial seizure should be of the inherited assets. This is referred to as respect for the heir's rights. Where the heir's fixed assets have been seized in relation to tax debts of the deceased, the heir can claim exchange of seized assets against the Director of the Tax Office if he or she possesses other inherited assets that are easily convertible and which are not encumbered by third party rights.

(c) *Movable property or securities in the possession of third parties*[71] _ Where the defaulter owns movable property or securities but they are in the possession of third parties other than his or her immediate family, if the third party refuses to hand over the property then seizure is not possible. However, where the defaulter does not own any other assets that are easily convertible and which would cover the entire tax debt, the Director of the Tax Office can issue a written order to the effect that the third party must deliver the movable property or securities to the Collection Officers.

5.7.2. Procedures for Delinquency Dispositions

(1) *Seizure of Assets*

Where a defaulter receives a demand and has not completed payment within 10 days of the issuance of the statement of demand, seizure of the defaulter's assets will commence.[72] For taxes that are subject to a claim for immediate collection, immediate preservative seizure or preservative seizure, or taxes that are to be collected once events have occurred which will allow a claim for immediate collection, seizure will commence without issuing a statement of demand.[73] Seizure is a procedure to prohibit disposal of assets by the defaulter. In general terms it follows the following stages.

Assets Subject to Seizure

Assets must display the following characteristics to be candidates for seizure:[74]

(a) they are owned by the defaulter;
(b) they have a monetary value;
(c) they are capable of being transferred; and
(d) they are not assets that are expressly excluded from seizure by the National Taxes Collection Law.[75]

Notification of Seizure

When a tax collection officer seizes a defaulter's assets, he or she must produce a written record of the seizure and, where the seized assets fall into specified categories such as movable property, must provide a certified copy of the record to the defaulter. For seizure of assets that are subject of third party rights such as rights of pledge, assets that have been provisionally registered in another's name and assets that have been provisionally seized or provisionally disposed of, the Director of the Tax Office must notify pledge holders of the details of the seizure where their identities are known. This notification is so that the third parties have the necessary opportunity to exercise their rights over the assets.

The Principles Applicable to Seizure

Assets not required for collection of taxes must not be seized.[76] This principle is known as the prohibition on excessive seizure (*chôka sashiosae no kinshi*). Further, it is not permissible to seize assets when there is no possibility that the value of seizable assets will be sufficient to cover the costs of the delinquency disposition[77] and any tax debts or other debts that have priority over the tax debt in question.[78] This principle is known as the prohibition on capricious seizure (*mueki na sashiosae no kinshi*). [79]

When seizing the defaulter's assets, unless there is some hindrance to the execution of the delinquency disposition, the seizure must be conducted so as not to impair rights over those assets held by third parties.[80] In particular, when assets are subject to a right of pledge, a hypothec, a right of priority, a lien, a lease or any other third party right, that third party has a right to claim exchange of seized assets to protect the right.[81]

For seizures relating to inheritance tax, the inherited assets are seized first. If assets of the heir are seized first, he or she can claim exchange of seized assets.[82]

The Effectiveness of Seizure

A seizure has the legal and practical effect of prohibiting disposal of certain of the defaulter's assets. Any transaction or creation of new rights which contravenes this prohibition is valid between the parties, but has no effect to obstruct a national or local public body from seizing the assets.[83] Provided that there is no obstruction to the collection of taxes, the defaulter may use the assets and derive income from them.[84] Where the seized asset is a debt, the taxpayer may not collect it, and the third party may not perform it. Seizure of a debt requires the sending of a Notification of Seizure of Debt (*saiken sashiosae tsûchisho*) to the third party obligor, and the seizure takes effect once this notification is sent.[85]

The effectiveness of a seizure of derived income extends to natural produce that is borne by seized property. However, where the defaulter or a third party retains the right to use and earn income from seized assets, the seizure is not effective in relation to natural produce borne from seized property (excluding produce not picked or harvested before the transfer of rights upon conversion of the asset to currency). Further, the effectiveness of the seizure does not extend to certain types of derived income borne from seized property specified in legislation. However, the effectiveness of the seizure does extend to interest earned after the seizure in the case of seizure of a debt. [86]

When seized assets are covered by insurance against loss, the effectiveness of the seizure extends to the right to receive payments under this insurance, but if the seizure has not been notified to the insurer this right can not be asserted against the insurer.[87]

Release from Seizure

Where the entire tax debt in relation to which the assets were seized is extinguished, tax collection officers must dissolve the seizure. The seizure must also be dissolved if the sale price of the seized assets ceases to look like exceeding the combination of the costs of the delinquency disposition and other debts that take priority.

When a tax collection officer recognises that, due to partial payment of the tax debt in relation to which the assets were seized, the value of the seized assets grossly exceeds the total of the outstanding tax and other debts that take priority, or when the tax collection officer seizes assets that the defaulter has offered as a suitable substitute, then the collection officer may release the defaulter's assets from seizure.[88]

Release from seizure occurs by notifying the defaulter as such. For release from seizure of debts or intangible assets with third party obligors, release occurs by notifying the obligor as such.[89] When assets are released from seizure, the Director of the Tax Office must notify the release and any other necessary details to pledgeholders to whom a notification of seizure of debt has been issued and parties who have made a claim for transfer.

(2) *Conversion of Assets to Currency*

Seized assets must be converted to currency, i.e. sold to the public in exchange for money. Debts are normally called in, so will not be converted to currency as such, but if the debt does not reach maturity within six months of attempting to call in the debt or if calling in the debt will be exceptionally difficult, then the debt can be sold.[90]

Conversion of assets to currency should in principle occur by public sale, which must be by tender or by auction.[91] This is to ensure a reasonable conversion and protect the interests of the defaulter. Further, in order to maintain the fairness and integrity of the public sale system, the defaulter may not directly or indirectly purchase his or her own assets. Nor may tax officials purchase the seized assets.[92]

Public sale is an administrative disposition which transfers the defaulter's assets to others, so it should be conducted only to the extent necessary for the collection of the taxpayer's tax debt: public sales in excess of this are illegal.

Methods and Procedures for Exacting a Debt

When calling in a seized debt, the tax collection officer makes a claim for performance to the third party obligor and takes receipt of the payment. If the third party obligor refuses to respond to the claim for performance, the collection officers can not seize the assets of the third party obligor, but must commence a civil action.

Sale of the Assets

Conversion to currency could occur by public sale or by private contract, but the former of these is to be used wherever possible.

Public sale is a method of sale to the highest bidder under free competition between multiple unspecified potential buyers. Private contract involves sale to a specified buyer where public sale is inappropriate.

Procedures Following Public Sale

After the procedures of the public sale or private contract have been conducted, the sale is completed, the sale price is paid and any procedures for transfer of rights are formalized.

(3) *Allocation of Funds*

Money obtained during the delinquency disposition is allocated to payment of tax and other debts. Sources of funds for allocation are:

(a) sale price of seized assets;
(b) monies received from third party obligors due to seizure of debts;
(c) seized money; and
(d) money received under a claim for transfer.[93]

The last two sources will be allocated only to payment of the tax debt in relation to which the seizure or claim for transfer was undertaken.[94]

The first two sources will be allocated to the following debts:

(a) the tax debts in relation to which the assets or debts were seized;
(b) taxes or other public levies for which a claim for transfer has been made;
(c) pledges, hypothecs, rights of priority, liens, or debts secured by provisional registration on the seized assets;
(d) the right to claim damages or a refund of rental payments from the defaulter of a third party who has received an order to deliver up movable property, motor vehicles, *etc.*

Once funds have been allocated to these debts, any remainder must be restored to the defaulter. Where there are insufficient funds, they must be distributed according to the priority of the various tax debts:[95] also, funds are allocated first to satisfaction of the primary tax debt, and only then to delinquency tax or interest tax.[96]

(4) *Claim for Transfer and Participatory Seizure*

Where compulsory conversion procedures for compulsory execution or a delinquency disposition have already been commenced against the defaulter's assets, collection officers can lodge a claim for transfer (*kôfu yôkyû*) to the executing body to seek allocation of funds to the relevant tax debt out of funds retrieved by that body.[97] The claim for transfer avoids the inefficiency of duplicating seizure of assets. Further, given that tax debts are generally given priority, a tax debt for which a claim for transfer is lodged will be satisfied next after the debt for which the seizure occurred.

Participatory seizure (sanka sashiosae) refers to procedures where tax collection offrcers participate in a delinquency disposition that is already underway in relation to the defaulter's assets.

To conduct participatory seizure, tax collection officers must:

(a) deliver the statutory Participatory Seizure Notice (*sanka-sashiosaesho*) to the administrative body already conducting the delinquency dispositi-on;
(b) notify the defaulter, pledge holders over the seized property and third party obligors of their participation in the seizure; and
(c) commission the concerned bodies for a registration of participatory seizure.[98]

5.8. Joint Tax Liability (*Rentai Nôzei Gimu*)

Joint tax liability refers to the situation where two or more taxpayers each have the obligation to satisfy the entire tax debt, but if one of them pays the debt then the obligations of all of them are relieved. The provisions in the Civil Code on joint liability apply *mutatis mutandis* to joint tax liability. [99]

5.8.1. The Creation of Joint Tax Liability

Joint liability for tax occurs in the following situations:

(a) national or local taxes levied on jointly owned property; [100]
(b) national or local taxes levied on a jointly owned business;[101]
(c) national or local taxes levied on the assets of a jointly owned business;[102]
(d) local tax on jointly used property or joint activities;[103]
(e) registration and licence tax where there are two or more persons being registered; [104]
(f) stamp tax where a single taxable document was created by two or more persons; [105]
(g) where two or more company employees with unlimited liability each have secondary tax liability;[106]
(h) inheritance tax or gift tax on assets inherited by two or more persons from a common deceased;[107]
(i) customs and tariffs where the true importer of goods is not apparent and where the business that put the goods through customs is not able to reveal the identity of its client;[108]
(j) mining allotment tax where a mining licence is transferred while mining allotment tax is outstanding. [109]

Joint tax liability is created in these circumstances mainly to guarantee the collection of tax debts.

5.8.2. Events with Absolute Effect

The following events in relation to one of the jointly liable taxpayers will be effective for or against all joint taxpayers, and are thus said to have absolute effect:

(a) performance of the tax debt;
(b) claims for performance such as notifications of tax obligation and demands;
(c) exemption from payment of tax;
(d) the passing of the extinction period on the right to collect tax; and
(e) the extinction of taxpaying obligation resulting from three continuous years ' suspension of the delinquency disposition.

5.8.3. Events with Relative Effect

The following events in relation to one of the jointly liable taxpayers will have no effect against the other joint taxpayers, and are thus said to have relative effect:

(a) the interruption of the prescription period by seizure etc. in relation to one of the joint taxpayers;

(b) the granting of a grace period or suspension of the prescription period to one of the joint taxpayers; and
(c) a reprieve from conversion to currency granted to one of the joint taxpayers.[110]

5.8.4. Collection from Taxpayers with Joint Tax Liability

Since each individual joint taxpayer has the obligation to fulfil the tax debt, the tax authorities can conduct assessment procedures, demands, delinquency dispositions, etc. to all or any of the joint taxpayers either at once or in succession.[111]

5.9. Secondary Tax Liability (*Dainiji Nôzei Gimu*)

Where the primary taxpayer is overdue in satisfying his or her tax debts and a delinquency disposition will not generate sufficient funds to satisfy the debt, responsibility for the tax debt shifts to certain third parties in specified relationships to the primary taxpayer[112] and collection procedures will commence against these third parties, who are said to have secondary tax liability.

5.9.1. The Legal Nature of Secondary Tax Liability

The secondary taxpayer has a separate tax liability from the primary taxpayer, but this liability arises for the first time when the primary taxpayer fails to satisfy his or her tax liability. The liability can therefore be characterized as supplementary. Furthermore, the secondary liability cannot exist without the primary, so that if the primary obligation is extinguished or modified, then the secondary obligation is likewise extinguished or modified. The liability can therefore also be characterized as dependent.

However, outside the limitations of this supplementarity and dependency, events relating to the primary liability do not extend to the secondary liability and *vice versa*.

5.9.2. Collection from Taxpayers with Secondary Tax Liability

When attempting to collect the balance of the tax debt that could not be met by the primary taxpayer, the amount and due date of the tax to be collected must be notified to the secondary taxpayer in a Notification of Payment (nôfu tsûchisho) . If payment is not received by the due date on the notification, then collection procedures will be commenced in the same way as against a primary taxpayer. However, the secondary taxpayer's assets can only be converted to currency after the primary taxpayer's assets have been converted.113 For taxes that are paid by or collected from the secondary taxpayer, the secondary taxpayer has a right of indemnity against the primary taxpayer.114

5.9.3. Protection of the Secondary Taxpayer's Rights

There are various issues concerning the protection of the secondary taxpayer's rights. One of the most important of these is whether the secondary taxpayer is able to bring a revocation suit in relation to a notification of tax obligation to him or her self when a correction or determination to the primary taxpayer is found to be illegal. There seems to be a consensus that if the correction or determination to the primary taxpayer is found void *ab initio*, then the notification of payment to the secondary taxpayer is also

prima facie void and the secondary taxpayer can file a revocation suit. In contrast to this, where the correction or determination to the primary taxpayer is not void but merely voidable, precedents suggest that a revocation action is not possible[115] while academic opinion suggests the opposite.[116]

5.10. Withholding Taxes and Special Collection Systems

There are many possible methods of constructing a taxation system, with different options for assessment, collection and payment. Some options are an administrative assessment system, a self-assessment system, a withholding tax system, a special collection system and a stamp duties system.

In Japan, the withholding tax system (*gensen chôshû seido*) is used for income tax on certain types of income, primarily for ease of collection. A special collection system (*tokubetsu chôshû seido*) is adopted for the securities transaction tax and certain types of local tax. The common point about these systems is that the taxpayer does not pay the tax to the national or local public body directly, but rather there is always a third party who is responsible for collection of the withholding tax or special collection: likewise, the public body cannot collect the tax directly from the taxpayer, but only from the third party responsible for collection. In other words, the legal relationship always has three parties, namely the levier of the tax, the collector and the taxpayer.

5.10.1. The Withholding Tax System

At present, the withholding tax system is used to collect income tax on income from bank interest, dividends, salary or wages, retirement payments, and certain payments and fees from business, temporary or miscellaneous sources.[117]

For income taxes collected in this way, the person who pays over the relevant income is nominated as a withholding tax collector, and has a duty to withhold a specified amount from any payment and then to pay that amount to the tax authorities. Therefore, withholding tax collectors have the right and obligation to collect tax on the income as if they were a tax collection agency, as well as the obligation to pay the tax on the taxpayer's behalf: this combination of rights and obligations is referred to as the "obligation to withhold tax" or the "obligation to withhold and pay tax".

The obligations on persons who pay over relevant income are set out clearly in tax legislation. Therefore, if a person with the obligation to withhold tax does not do so when paying out relevant income, not only is the collector liable for the tax that should have been subtracted from the income, but he or she may also be liable for breach of the obligation to withhold tax and will be liable for any penalty taxes.[118] The taxpayer cannot dispute legal subtractions by the duty holder.

A withholding tax system is in a sense a type of provisional tax system, so the recipient of income of which a portion has been withheld includes that income with other income when submitting his or her return under the coordinated assessment system, calculates the amount of tax owing under the progressive tax rates, and calculates the surplus still owing after crediting the tax paid already via withheld amounts. In such a case, the withheld tax is merely subtracted from the total amount of the tax debt. Furthermore, in some cases, it is not even necessary to submit a return, namely:

(a) where the taxpayer receives no other income and has already gone through year-end adjustments;
(b) where a retired taxpayer has had tax withheld from income;
(c) where the taxpayer has elected to pay tax on income on bank interest or dividends by withholding tax alone; and
(d) where the taxpayer is given express permission not to submit a return on income from bank interest or dividends,[119]

5.l0.2. Special Collection Systems

Special collection systems are employed for collection and payment of securities transaction tax [l20] at the national level, and prefectural inhabitant tax, municipal inhabitant tax, golf course utilization tax, special local consumption tax, diesel oil delivery tax and bathing tax at the local level.

Under the special collection systems, when businesses receive fees or compensation during the course of their businesses, the recipient is nominated the special tax collector, who must collect a specified amount of tax together with the fees or compensation, and then pay that tax to the relevant authority. Thus, the scope of special collection systems is broader than that of withholding taxes. Furthermore, while prefectual and municipal inhabitants tax operate under special tax collection systems in form, in substance they are withholding taxes

Under a special collection system, special tax collectors have the power and obligation to collect taxes as if they were tax collecting agencies, as well as the obligation to pay the collected tax in the place of the taxpayer: this combination of rights and duties is referred to as the "obligation of special collection". Persons who are in a position to receive certain types of fees and compensation bear this obligation and are thus special tax collectors. Therefore, if a special tax collector does not collect the required tax when receiving fees or compensation, he or she is not only liable for that amount of tax, but may also be liable for breach of the obligation of special collection and for any penalty taxes that may be levied.

5.10.3. The Right of Indemnity of Persons under the Obligation to Collect Withholding Tax or Special Collections

Where persons under the obligation to collect withholding tax or special collections make the payments without having collected the tax first from the taxpayer, they can claim indemnity from the taxpayer for the amount of the tax that was supposed to have been collected and paid.[121]

5.10.4. Constitutionality of the Withholding Tax System

There are several constitutional issues relating to the withholding tax system.

Firstly, there is the issue of whether the obligation to collect taxes imposed on a party other than the taxpayer under a withholding tax system breaches the principle of equality under the law in Article 14 of the Constitution. On this point, the courts have held that it is not unreasonable to impose the obligation of collection on a party in a special relationship to the taxpayer out of considerations of convenience, and there is no constitutional breach.[122]

Secondly, there is the issue of whether the imposition of an obligation to collect taxes without remuneration under a withholding tax system breaches the principle that private property may be taken for public use upon just compensation in Article 29(3) of the Constitution. On this point, the courts have held that the obligation in this situation is a mere trifle and does not impose such as burden as to warrant compensation, so that there is no breach of the Constitution,[123]

In today's Japan, business and industry is bearing a heavy burden in the compliance costs of withholding taxes, special collection systems and year-end adjustments. There have been strong criticisms of the courts for ratifying tax procedures which require the unpaid services of business and industry.[124]

[1] Under the Law Relating to Payment of Annual Revenue with Securities [*Shôken o motte suru Sainyu Nôfu ni kansuru Hôritsu*] (Law No. 10 of 1915), it is possible to pay taxes with securities such as cheques or national bonds.

[2] National Taxes Common Provisions Law [*Kokuzei Tsûsoku Hô*] (Law No. 66 of l962) Article 34-2. However, National Taxes Common Provisions Law Basic Circular [*Kokuzei Tsûsoku Hô Kihon Tsûtatsu*] (1970 Chôkan 2-43 etc.) Article 34-2 Note l proscribes payment by direct transfer in the following cases:

(1) national taxes that are already overdue;
(2) national taxes for which a late or revised return has been filed, a correction or determination, etc. has been issued or a Notification of Tax Obligation has been issued;
(3) national taxes that are not paid on a continuing basis, such as inheritance tax and gift tax;
(4) national taxes levied on corporations within the jurisdiction of the Tax Office;
(5) national taxes which are determined and paid by the month; and
(6) taxes for which the taxpayer has requested special conditions as to the date of remittance for the Statement of Notification.

3 National Taxes Common Provisions Law Article 34; Inheritance Tax Law
4 [*Sôzokuzei Hô*] (Law No. 73 of 1950) Article 41.

[4] See **5.9.** below.

[5] National Taxes Common Provisions Law Article 41 ; Local Taxes Law [*Chihôzei Hô*] (Law No. 226 of 1950) Article 20-6.

[6] National Taxes Common Provisions Law Article 2(1)(viii).

[7] National Taxes Common Provisions Law Article 72. The limitations period is five years.

[8] National Taxes Common Provisions Law Article 60(2). See **5.2.3.** below

[9] Local Taxes Law Articles 321 and 365.

[10] Adapted from Japan Women's *Zeirishi* League [Zenkoku Fujin Zeinshi Renmei], *Handy Dictionary. of Tax Procedures* [Sozei Tetsuzuki Benri Jiten] (1993), at 178-181.

[11] National Taxes Common Provisions Law Article 60.

[12] National Taxes Common Provisions Law Articles 61 and 62.

[13] Income Tax Law [*Shotokuzei Hô*] (Law No. 33 of 1965) Article 15; Inheritance Tax Law Article 62; *etc.*

[14] Corporation Tax Law [Hôzinzei Hô] (Law No. 34 of 1965) Article 16.

[15] Corporation Tax Law Article 17.

[16] Consumption Tax Law [*Shôhizei Hô*] (Law No. 108 of 1988) Article 5 1 ; Liquor Tax Law [*Shuzei Hô*] (Law No. 6 of 1953) Article 30-6; Tobacco Tax Law [*Tabakozei Hô*] (Law No. 72 of 1984) Article 22; Gasoline Tax Law [*Kihatsuyuzei Hô*] (Law No. 55 of 1957) Article 13.

[17] Kaneko, Hiroshi, *Texation Law <Fourth Edition>* [Sozeiho <Daiyonhan>] (1992), at 528.

[18] Inheritance Tax Law Articles 38 and 39.

[19] Inheritance Tax Law Article 38(3).

[20] See Local Taxes Law Article 15 ff.

[21] National Taxes Common Provisions Law Article 47.

[22] National Taxes Common Provisions Law Basic Circular Article 46 Note 2.

[23] “Consumption taxes" is used here generically to refer to indirect taxes such as the national consumption tax, liquor tax, tobacco tax, gasoline tax, local roads tax, petroleum gas tax and petroleum tax. National consumption tax ("the consumption tax") is a multi-tier value-added general consumption tax in operation since 1 April 1988 under the Consumption Tax Law, while the other types of tax just listed are single-tier individual consumption taxes. See National Taxes Collection Law Articles 158(1) and 158(2)(i).

[24] National Taxes Common Provisions Law Article 46(1); National Taxes Common Provisions Law Enforcement Order [*Kokuzei Tsusoku Ho Sekorei*] (Cabinet Order No.135 of 1962) Article 13; Local Taxes Law Article 15.

[25] National Taxes Common Provisions Law Article 46(2).

[26] National Taxes Common Provisions Law Article 46(3).

[27] National Taxes Common Provisions Law Article 46(7).

[28] National Taxes Common Provisions Law Article 48(1).

[29] National Taxes Common Provisions Law Article 48(2).

[30] National Taxes Common Provisions Law Article 48(3).

[31] National Taxes Common Provisions Law Article 48(4).

[32] National Taxes Common Provisions Law Article 63.

[33] Taxation Special Measures Law [*Sozei Tokubetsu Sochi Hô*] (Law No. 26 of 1957) Article 70-4.

[34] Taxation Special Measures Law Article 70-6.

[35] Taxation Special Measures Law Articles 70-4(15) and 70-6(18).

[36] National Taxes Collection Law [*Kokuzei Chôshû Hô*] (Law No. 147 of 1959) Article 151.

[37] National Taxes Collection Law Article 153.

[38] Kaneko, *supra* n.17, at 545.

[39] National Taxes Common Provisions Law Article 50.

[40] National Taxes Common Provisions Law Article 51.

[41] National Taxes Common Provisions Law Article 52.

[42] National Taxes Common Provisions Law Article 36(1).

[43] National Taxes Common Provisions Law Article 36(2).

[44] National Taxes Common Provisions Law Article 32(3).

[45] National Taxes Common Provisions Law Article 73(1)(iii).

[46] Local Taxes Law Article 13 .

[47] National Taxes Common Provisions Law Article 37; Local Taxes Law Articles 66, 72-66 and 73-34.

[48] Japan Women's *Zeirishi* League, *supra* n.10, at 192.

[49] National Taxes Common Provisions Law Article 40.

[50] National Taxes Common Provisions Law Article 52(3); National Taxes Collection Law Article 32(2).

[51] National Taxes Common Provisions Law Article 38.

[52] National Taxes Common Provisions Law Article 38(2).

[53] National Taxes Common Provisions Law Article 40.

[54] National Taxes Common Provisions Law Articles 38(3) and (4).

[55] *Kokuzei Hansoku Torishimari Hô* (Law No. 67 of 1900).

[56] *Keiji Soshô Hô* (Law No. 131 of 1948).

[57] National Taxes Collection Law Article 159(1).

[58] Kaneko, supra n. 17, at 541.

[59] National Taxes Collection Law Article 8.

[60] National Taxes Collection Law Articles 15 to 22.

[61] National Taxes Collection Law Articles 9 to 10.

[62] National Taxes Collection Law Articles 11 to 14.

[63] National Taxes Collection Law Articles 11 to 14.

[64] National Taxes Collection Law Articles 11 to 14; Local Taxes Law Articles 14-4 to 14-8.

[65] National Taxes Common Provisions Law Articles 40 and 43; National Taxes Collection Law Articles 182, 183, 184 and 185.

[66] The costs of a delinquency disposition include the costs related to seizing property and making a claim for transfer, as well as the costs of storage, transport, converting to currency and maintenance of the property and its eventual distribution. However, the clerical costs of notifications, etc. are not included. The costs of compulsory conversion to currency include the costs of handling and converting the property. For details, see National Taxes Collection Law Basic Circular [*Kokuzei Chôshû Hô Kihon Tsûtatsu*] (1966 Chôchô 4-13 etc.) Article 10.

[67] National Taxes Collection Law Articles 9, 19, 21, 59(3) and 71(4).

[68] National Taxes Collection Law Articles 15, 16, 17, 20 and 23.

[69] National Taxes Collection Law Articles 49 and 50.

[70] National Taxes Collection Law Article 51.

[71] National Taxes Collection Law Article 58.

[72] National Taxes Collection Law Article 47(1)(i).

[73] National Taxes Collection Law Articles 47(1)(ii) and 47(2).

[74] Kaneko, supra n.17, at 566.

[75] National Taxes Collection Law Articles 75, 76, 77 and 78.

[76] National Taxes Collection Law Article 48(1).

[77] See n.66.

[78] National Taxes Collection Law Article 48(2).

[79] In historical terms, under the former National Taxes Delinquency Dispositions Law [*Kyu Kokuzei Taino Shobun Ho*] (Law No. 32 of 1889, repealed), the only provision in this area was Article 13 which provided that "when performing a seizure of property, this should occur with the cost of the disposition and the amount of the delinquent tax as a general guide". The former National Taxes Collection Law [*Kyu Kokuzei Choshu Ho*] (Law No. 21 of 1897, repealed) had no express provision in this area, there merely being a reference in a circular that "care should be taken that the value of property seized does not markedly exceed the amount of the tax debt". Therefore, it is of great significance for taxpayers' procedural rights that the current National Taxes Collection Law expressly prohibits excessive and capricious seizure. However, the courts have held that the scope of seizure dispositions must by their nature be determined by the discretion of collection officials, thus expressing a liberal interpretation of the excessive seizure provision: there is no illegality provided there is not an extreme breach of equitable principles. For instance, see *Takeuchi v. Mayor of Kamonaga* (Tokushima District Court, March 7, 1955) 7(3) *Gyoshu* 518. In one extreme case relating to a delinquent tax amount of around ¥20,000, the court held that seizure of property with a sale value of ¥1,500,000 was not prima facie invalid: *Mori v. Japan* (Supreme Court, June 25, 1971) 18(3) *Shomu Geppo* 353. One reason why the courts take this liberal interpretation of excessive seizure might be that seizure, as opposed to conversion, is seen as a temporary measure.

As to whether a seizure is 'excessive' or not, this is judged according to whether the estimated sale value is a fair one and then whether this estimated value markedly exceeds the delinquent tax amount. It is important to adhere strictly to these criteria to ensure protection of the taxpayer's rights. In one case where the collection officer seized a telephone subscription right with a market value of ¥60,000 in relation to unpaid interest tax of ¥352, the court held the delinquency disposition invalid on the basis that there was no balance between the delinquent tax amount and the value and type of the seized property: *Director of Kobe Tax Office v. Yamashita* (Osaka High Court, April 17, 1969) 596 *Hanrei Jiho* 30.

[80] National Taxes Collection Law Article 49.

[81] National Taxes Collection Law Article 50.

[82] National Taxes Collection Law Article 51.

[83] Kaneko, supra n.17, at 572.

[84] National Taxes Collection Law Articles 61 and 69.

[85] National Taxes Collection Law Article 62.

[86] National Taxes Collection Law Article 52.

[87] National Taxes Collection Law Article 53.

[88] National Taxes Collection Law Article 79.

[89] National Taxes Collection Law Article 79.

[90] National Taxes Collection Law Article 89.

[91] National Taxes Collection Law Article 94.

[92] National Taxes Collection Law Article 92.

[93] National Taxes Collection Law Article 128.

[94] National Taxes Collection Law Article 129.

[95] National Taxes Collection Law Article 129(5).

[96] National Taxes Collection Law Article 129(6).

[97] National Taxes Collection Law Article 82.

[98] National Taxes Collection Law Articles 86 ff.

[99] National Taxes Common Provisions Law Article 8 ; Local Taxes Law Article 10.

[100] National Taxes Common Provisions Law Article 9; Local Taxes Law Article l0-2.

[101] National Taxes Common Provisions Law Article 9; Local Taxes Law Article l0-2.

[102] National Taxes Common Provisions Law Article 9; Local Taxes Law Article l0-2.

[103] National Taxes Common Provisions Law Article 9; Local Taxes Law Article l0-2.

[104] Registration and Licence Tax Law [*Tôroku menkyozei* Hô] (Law No.35 of 1967) Article 3.

[105] Stamp Tax Law [*Inshizei Hô*] (Law No. 23 of 1967) Article 3(2).

[106] National Taxes Collection Law Article 33.

[107] inheritance Tax Law Article 34.

[108] Customs and Tariffs Law [*Kanzei Ho*] (Law No.61 of 1954) Article 13-3.

[109] Local Taxes Law Article 195.

[110] Civil Code [*Minpo*] (Law No. 89 of 1898) Article 440.

[111] Civil Code Article 432.

[112] For instance, where a residential property owned by a husband is registered in the name of his wife, if there is rental income from the property this will be assessed against the husband. However, because the property is formally registered in the wife's name, it is not possible to issue a delinquency disposition against the husband. The wife is therefore deemed to have secondary taxpayer's liability. Other examples of secondary taxpayer's liability are:

(a) a partner with unlimited liability in a partnership corporation or a limited partnership corporation (National Taxes Collection Law Article 33);
(b) the liquidator, etc. where a corporation has been dissolved (Article 34);
(c) the defaulter's family company (Article 35);
(d) a person to whom income legally attributes, a person to whom property has been legally leased or a beneficiary of a transaction which is not recognized (Article 36);
(e) a partner in a joint Venture (Article 37);
(f) a transferee of a business (Article 38);
(g) a gratuitous transferee (Article 39);
(h) unincorporated organizations (Article 40).

[113] National Taxes Collection Law Article 32(4); Local Taxes Law Article 11(3).

[114] National Taxes Collection Law Article 32(5); Local Taxes Law Article 11(5).

[115] For example, *Yokomizo v. Director of Okayama Prefecture Kurashiki Local Development Bureau* (Supreme Court, August 27, 1975) 29(7) *Minshû* 18.

[116] For example, Kitano, Hirohisa, Principles of Tax Law < *Third Edition*> [Zeih-ôgaku Genron <Daisanpan>] (1992), at 245.

[117] lncome Tax Law Articles 181 to 215; Taxation Special Measures Law Article 41-12 Paragraphs (3) and (4).

[118] National Taxes Common Provisions Law Articles 67 and 68(3); Income Tax Law Article 239.

[119] Income Tax Law Article 121; Taxation Special Measures Law Articles 3, 3-3, 8-2 to 8-4, and 8-5.

[120] Securities Transaction Tax Law [*Yûkashôken-torihikizei Hô*] (Law No. 102 of 1953) Article 11-2.

[121] Income Tax Law Article 222; Local Tax Law Articles 87(5) and 119(3); *etc.*

[122] *Japan v. Itô* (Supreme Court February 28, 1962) 16(2) *Keishû* 212; *Japan v.*

Kanaoka (Supreme Court, February 21, 1962) 16(2) *Keishû* 107; *Ikehata v. Japan* (Supreme Court, February 7, 1989) 35(6) *Shômu Geppô* 1029.

[123] *Ibid*.

[124] See Ishimura, Kôji, 'Issues in the Protection of Taxpayers' Rights and Reform of Tax Procedure' (1995) 67(3) *Hôritsu Jihô* 33, at 37.

Figure 5-2: Overview of Payment Deadlines and Supplementary Taxes

The following abbreviations are used in this table:
ConTL = Consumption Tax Law, CorTL = Corporation Tax Law. IncTL = Income Tax Law, InhTL = Inheritance Tax Law, LVTL = Land Value Tax Law, NTCPL = National Taxes Common Provisions Law, TSML = Taxation Special Measures Law.

Type of Tax	Type of Return	Payment De8dline		
Income Tax	Return filed before the filing deadline	regular	(IncTL 120)	15 March of the following year - payment by funds transfer possible
			death of taxpayer (IncTL 124, 125)	4 months less 1 day after the day on which the taxpayer learnt of the commencement of distribution of the inheritance **[please check re distributlon]**
			taxpayer leaves Japan (IncTL 126)	the day of departure
		irregular	deferred payment	31 May (under IncTL 131)
			conditional deferred payment **[please check]**	within 5 years (under IncTL 132)
			extension of the payment deadline due to disaster, etc. (NTCPL 11)	the day specified by the Director of the Tax Office not more than 2 months after the reason for the extension has subsided
	return filed after the filing deadline	(NTCPL 35)		the day on which the return is filed
	revised return	regular (NTCPL 35)		the day on which the revised return is filed
		obligatory revised return (TSML 37-2, *etc*.)		the filing deadline for the revised return
	determination	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
Corporation Tax	return filed before the filing deadline	regular (CorTL 74)		within 2 months and 1 day from the end of the business year - payment by funds transfer possible
		iregular	extension of the payment deadline due to disaster, etc. (CorTL 11)	the day specified by the Director of the Tax Office not more than 2 months after the reason for the extension has subsided
			extension of the payment deadline due to disaster, etc. (CorTL 75)	the day specified by the Director of the Tax Office
			extension of the payment deadline due to an accounting inspection (CorTL 75-2)	within 3 months and 1 day from the end of the business year
	return filed after the filing deadline	(NTCPL 35)		the day on which the return is filed

	revised return	(NTCPL 35)		the day on which the revised return is filed
	determination	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
Inheritance Tax	Return filed before the filing deadline	regular	(InhTL 27)	within 10 months and 1 day from the date on which the taxpayer learnt of the commencement of distribution of funds under the inheritance - extension of the deadline possible
			death of the taxpayer (InhTL 27(2))	within 10 months and 1 day from the date on which the taxpayer learnt of the commencement of distribution of funds under the inheritance - extension of the deadline possible
			taxpayer leaves Japan (InhTL 27(1))	where the taxpayer departs before the filing deadline, the departure date
		irregular	extension of the payment deadline due to disaster, etc. (NTCPL 11)	the day specified by the Director ofthe Tax Office not more than 2 months after the reason for the extension has subsided
	return filed after the filing deadline	(NTCPL 35)		the date on which the return was filed
	revised return	regular (NTCPL 35)		the date on which the revised return is filed
		inheritance remains undistributed (IhhTL 31(1))		the date on which the revised return is filed
		obligatory revised return (TSML 70-2, InhTL 50(2) and 31(2))		The filing deadline for the revised return
	determination	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		l month and 1 day from the issuance date of the Notice
	any of the above	deferred payment (InhTL 38)		within up to a maximum of 20 years
Gift Tax	return filed before the filing deadline	regular	(InhTL 28)	l5 March of the year following receipt of the gift
			death of the taxpayer (InhTL 28(2))	within 10 months and 1 day from when the taxpayer learnt of the commencement of distribution of the inheritance - extension of payment possible
			taxpayer leaves Japan (InhTL 28)	where the taxpayer departs before the filing deadline, the departure date
		irregular	extended payment due to disaster, etc. (NTCPL I I)	the date specified by the Director of the Tax Office not more than 2 months after the reason for the extention has subsided.

	Return filed after the filing deadline	(NTCPL 35)		the date on which the return is filed
	revised return	(NTCPL 35)		the date on which the revised return is filed
	determination	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice
	any of the above	deferred payment (InhTL 38(3))		Within 5 years
Land Value Tax	return filed before the filing deadline	regular	(LVTL 25)	31 October of that year
			(LVTL 28)	31 March of the following year
			death of the taxpayer (LVTL 25(2))	4 months less 1 day from the date when the taxpayer learnt of the commencement of distribution of the inheritance
		irregular	inheritance remains undistributed (LVTL 26)	4 months from the date when distribution is confirmed
			extension of payment due to disaster, etc. (NTCPL11)	the day specified by the Director of the Tax Office not more than 2 months after the reason for the extension has subsided
	return filed after the filing deadline	(NTCPL 35)		the date on which the return is filed
	revised return	(NTCPL 3S)		the date on which the revised return is filed
	determination	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice
Consumptio-n Tax	return filed before the filing deadline	regular	(ConTL 45)	within 2 months of the end of the taxation period
			death of the taxpayer (ConTL 45(2))	4 months less 1 day from the date when the taxpayer learnt of the commencement of distribution of the inheritance
		irregular	for individual business people (TSML 86-5)	31 March of the following year - payment by fund transfer possible
			extension of payment due to disaster, etc. (NTCPL 11)	the day specified by the Director of the Tax Office not more than 2 months after the reason for the extension has subsided
	return filed before the filing deadline	(NTCPL 3S)		the date on which the return is filed
	revised return	(NTCPL 35)		the date on which the revised return is filed
	determination	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice
	correction	(NTCPL 35)		1 month and 1 day from the issuance date of the Notice

Chapter 6
The Tax Appeals System

6.1. Outline of the Administrative Review (*Fufuku Môshitate*) System

Where a taxpayer has a complaint against a tax disposition, he or she can normally proceed to judicial review only after going though an objection or National Tax Tribunal review. [1]

Factors favouring a principle of prior administrative review include:

(a) the fact that tax dispositions are extremely frequent;
(b) the fact that tax dispositions are specialized and technical; and
(c) the fact that most disputes concerning tax dispositions relate to confirmation of factual elements.

Considering these factors, the first step in providing simple and speedy relief for the convenience of the taxpayer is to allow the tax authority to review its original disposition. If the taxpayer then wishes to proceed to judicial review, this path is guaranteed, and the prior administrative review will have served the purpose of clarifying the factual issues, which will assist in the smooth running of litigation.[2]

Contrary to these arguments favouring compulsory administrative review, critics have argued that the above factors form insufficient basis for forcing administrative review procedures upon the taxpayer, and that combined with the strictness of the format and timing of the system, it in fact impedes true relief for the taxpayer.[3]

Another factor to consider here is that tax dispositions take effect immediately upon their creation, and are not suspended even if they are subject to litigation.[4]

In recent years, correction dispositions by the tax authorities are becoming fewer in number and the number of cases of administrative review has not been large. As mentioned at 4.2.1., one reason for this trend is that the tax authorities encourage taxpayers to submit revised returns. Another reason is that salaried workers, who make up almost 800% of the Japanese taxpaying population, pay their tax through year-end adjustments rather than by submitting final retus: they are therefore not eligible to seek administrative review. [5]

6.2. Administrative Review Statistics

6.2.1. Objections (*Igi Môshitate*)

In the year 1 April 1992 to 31 March 1993, the total number of objections against tax dispositions (including corrections, determinations, notifications of tax obligation, *etc.*) was 6,871. Of these, 4,492 cases involved income tax, 661 cases corporation tax, 588 cases consumption tax, 332 cases inheritance tax, 129 cases withholding income tax, 553 cases collection procedures, and 116 others.[6]

During the same period, the number of cases (including those carried over from the

previous year) where the disposition was revoked in its entirety was 31 for income tax cases, 14 for corporation tax cases, 4 for consumption tax cases, 16 for inheritance tax cases, 4 for other cases, for a total of 69 cases.[7]

The number of cases where the disposition was partially revoked was 363 for income tax cases, 51 for corporation tax cases, 46 for consumption tax cases, 58 for inheritance tax cases, 17 for other cases, for a total of 535 cases.[8]

Type of Tax		Number of Cases	Revocations			Success Rate (%)
			Entire	Partial	Total	
Income Tax		4492	31	363	394	8.8
Coporation Tax		661	14	51	65	9.8
Consumption Tax		588	4	46	50	9.0
Inheritance Tax		332	16	58	74	22.0
Others		798	4	17	21	2.6
	Withholding Income Tax	129				
	Collection Procedures	553				
Total		6871	69	535	604	8.8

The total number of cases of total or partial invalidation was 604, so the taxpayer was successful in approximately 10% of cases.

6.2.2. NTT Review (*Shinsa Seikyû*)

In the year 1 April 1992 to 31 March 1993, the total number of claims for NTT review of tax dispositions (including corrections, determinations, notifications of tax obligation, *etc.*) was 3,408. Of these, 2,432 cases involved income tax, 322 cases corporation tax, 187 cases consumption tax, 109 cases inheritance tax, 50 cases withholding income tax, 221 cases collection procedures, and 87 others.[9]

Type of Tax		Number of Cases	Revocations			Success Rate (%)
			Entire	Partial	Total	
Income Tax		2432	100	366	466	19.2
Coporation Tax		332	31	56	87	27.0
Consumption Tax		187	0	4	4	2. l
Inheritance Tax		109	13	7	20	18.3
Others		358	8	18	26	7.3
	Withholding Income Tax	50				
	Collection Procedures	22l				
Total		3408	152	45l	603	17.7

During the same period, the number of cases (including objections carried over from the previous year) where the disposition was revoked in its entirety was 100 for income tax cases, 31 for corporation tax cases, 0 for consumption tax cases, 13 for inheritance tax cases, 8 for other cases, for a total of 152 cases.[10]

The number of cases where the disposition was partially revoked was 366 for income tax cases, 56 for corporation tax cases, 4 for consumption tax cases, 7 for inheritance tax cases, 18 for other cases, for a grand total of 451 cases.[11]

The total number of cases of total or partial invalidation was 603, so the taxpayer was successful in approximately 18% of cases.

[1] National Taxes Common Provisions Law [*Kokuzei Tsusoku Hô*] (Law No. 66 of 1962) Article 115.
[2] See *Hirayama and ors v. Director of Higashi-Yodogawa Tax Office* (Osaka High Court, December 21, 1971) 63 Zeimu Soshô Shiryô 1233.
[3] See Kitano, *Hirohisa, Principles of Tax Law < Third* Edition > [Zeihôgaku Genron (Daisanpan)] (1992), at 372 ff. For an analysis of Japanese tax litigation procedures in English, see Ishimura, Kôji, Japanese Tax Litigation System and Procedures' (1980) 13 *Law in Japan: An Annual 111.*
[4] National Taxes Common Provisions Law Article 105.

[5] For a detailed analysis, see Chapter 14 below.
[6] National Tax Administration [Kokuzeichô] (ed.), 118*th Comprehensive Statistical Report of the National Tax Administration* [Dai-ll8-kai Kokuzeichô Tôkei Nenpôsho] (1994), at 200-201 .
[7] *lbid* .
[8] *lbid* .

[9] *Ibid* .
[10] *Ibid*
[11] *Ibid*.

However, the number of cases which were withdrawn while the NTT was reviewing the case was 340 during the stated period.[12] Amongst these withdrawn cases would be cases where the tax authorities had issued a correction disposition to return the amount of the tax debt to that originally claimed by the taxpayer in his or her return, which do not show up on the statistics as successes for the taxpayer.

6.3. Objections

Objections relating to different types of dispositions are brought before different authorities, as follows.

(a)Objections relating to dispositions by the Director of a Tax Office (excluding those under (d) below) are heard by that Director.
(b)Objections relating to dispositions by the Regional Commissioner of a Regional Taxation Bureau are heard by that Regional Commissioner.
(c)Objections relating to dispositions by the Commissioner of the National Tax Administration are heard by the Commissioner.
(d)Notifications of correction or determination based on audits by officials of the National Tax Administration or the Regional Taxation Bureau are issued in the name of the Director of the responsible Tax Office, but objections must be directed to the Commissioner of the National Tax Administration or the Regional Commissioner of the Regional Taxation Bureau, whichever has supervision of the officials who conducted the audit.

The objection is raised by filing an Objection Application (*igi môshitatesho*) containing the required details.

The authority evaluating the objection will conduct an audit, and then dismiss or overrule the complaint or revoke all or part of the disposition, notifying the taxpayer of the result by sending a certified copy of the Objection Evaluation Notice (*igi ketteisho*) containing a statement of reasons. Where all or part of the original disposition is retained, express reasons why that disposition is appropriate must be included.

6.3.1. Procedure for Objections

Evaluation of an objection normally occurs through examination of documentary evidence by the inquisitorial mode (*shokken shugi*), but where the taxpayer requests it, he or she must be allowed to present oral arguments.[13]

[12] *Ibid*
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13 National Taxes Common Provisions Law Articles 84(1) and 101; Administrative Review Adjudication Law [Gyô sei Fufuku Shinsa Hô] (Law No. 160 of 1962) Articles 25(1) and 48.

6.4. National Tax Tribunal Review

NTT review can occur at first instance or appellate level, the latter being more common. A claim for appellate NTT review is made to the President of the National Tax Tribunal where the taxpayer wishes to contest the original disposition following a correctly conducted objection evaluation. However, it is not possible to claim appellate NTT review of a disposition by the Commissioner of the National Tax Administration.
First instance NTT review typically occur in the following situations:

(a)dispositions by heads or officials of the National Tax Administration, Regional Taxation Bureau, Tax Offices or any administrative agency other than Customs Houses;
(b)where a correction was made to a blue retum lodged in relation to income tax or corporation tax, except those corrections based on audits by officials of the National Tax Administration (objection is also possible in this case);
(c)where the taxpayer was not instructed of the possibility of filing an objection in relation to the original disposition (objection is also possible here);
(d)where there is some other legitimate reason to seek NTT review rather than an objection;
(e)where an objection has not been evaluated three months after it was filed, excluding objections filed with the Commissioner of the National Tax Administration.

Where the authority to whom an objection is filed has not evaluated it within three months of the filing, that authority must instruct the taxpayer in writing that he or she may immediately proceed to NTT review. The reasons for the original disposition must be included with such an instruction.

The National Tax Tribunal will evaluate the claim, appointing members of the Tribunal to handle the review if the claim has some legal basis, or dismissing it if it is unfounded. The members will conduct the proceedings in a consultative mode based on the written response of the authority that made the original disposition and the rebuttals of the claimant. They will form an opinion based on evidence offered by the claimant and gathered on their authority, and will reach a consensus decision. The President of the National Tax Tribunal will make the final adjudication based on the consensus decision of the appointed members, and will notify the claimant of the result by sending a certified copy of the outcome of the review and a statement of reasons. Where the review retains all or part of the original disposition, express reasons why that disposition is appropriate must be included.

The review binds authority that issued the original disposition and all related the administrative bodies.

6.4.1. Procedure for NTT Review

Where the claimant requests it, the Tribunal must allow the claimant to present arguments orally. This is the same situation as for objections,[14]

It is possible to interpret this as adopting elements of the party system in procedures that are essentially inquisitorial and documentary: the claimant is thus placed on substantially the same footing as the tax authority and is assured the opportunity to accurately present his or her claims and challenges,[15] However, the reality of NTT review is that the Tribunal members rarely test the claims and evidence provided by the tax authority or their own impressions by engaging in oral argument with the claimant: normal procedure is to take down the claimant's opinions in a Record of Oral Arguments (*kôtô chinjutsu rokushusho*) and use it as one of the written materials.

No provision is made for interviews or discussion with the tax authority which made the original disposition or its officials.
The claimant may provide documentary or material evidence to back up his or her own

claims,[16] and can also request the decision-making body to require the body making the original disposition to produce documentary or material evidence[17] which he or she can request to inspect.

6.5. Time Frame for Administrative Review

The limitations period for administrative review relating to tax dispositions commences on the day after the claimant learns of the existence of the disposition. As most tax dispositions are conducted in writing, the limitations period will thus normally commence on the day written notification is received.

The limitations period is two months for objections and first instance NTT review, and one month for appellate NTT review (from the day after notification of the first instance decision is received).

Documents must actually reach the relevant agency before the expiry of the limitations period.

[14] National Taxes Common Provisions Law Articles 84(1) and 101(1).

[15] Minami, Yasutada (ed.), *Exegesis on the Law of Administrative Review and Litigation in Tax* [Chûshaku Kokuzei Fufuku Shinsahô, Soshôhô] (1982), at 79.

[16] National Taxes Common Provisions Law Article 95; Administrative Review Adjudication Law Article 26.

[17] National Taxes Common Provisions Law Article 97(1)(ii); Administrative Review Adjudication Law Article 28.

Where submission of documents occurs by mail, submission will be considered to have occurred on the date of the receipt stamp. Furthermore, if the tax authority mistakenly instructs the claimant of a longer limitations period, an action initiated before that date will be valid.

6.6. Appointment of Representatives

Anyone can be appointed as a claimant's representative to deal with an administrative review not just *zeirishi*, but most claimant do appoint *zeirishi*.

A representative can do anything that the claimant is able to do in relation to the administrative review, except that there must be a separate commission to withdraw the case or to sub-delegate representative power.

However, the decision-making authorities will normally send documents only to the claimant, and not to the representative. The extent of the representative power of the representative is thus dependent to some degree on the discretion of the decision-making authority .

6.7. Historical Development of the National Tax Tribunal

The National Tax Tribunal was created in 1970 as a specialist body to deal with administrative review of domestic tax matters,[18]

Before that time, a Conference system had been in place. Most cases of administrative review were heard by a Conference annexed to the Regional Taxation Bureau. The Regional Commissioner of the Regional Taxation Bureau made the final adjudication based on the decision of the Conference,[19]

The Conference system was introduced in 1950 following the Shoup Report.[20] This allowed contribution to the decision-making process by a body other than the final adjudicating authority, and in terms of increasing the degree of care taken in making decisions and adjudications for administrative review it was unique in post-war Japan. However, from considerably prior to the 1970 amendment, various doubts had been raised over the Conference system. In general terms, the doubts were as follows.

Since the Conference was structurally subservient to the Regional Commissioner of the Regional Taxation Bureau and the Regional Commissioner retained the legal power to make the final adjudication, it would not be realistic to expect fair outcomes. In particular,

[18] National Taxes Common Provisions Law Article 78.
[19] See Article 83 of the pre-1970 National Taxes Common Provisions Law.
[20] See Shoup Mission, Second Report on Japanese Taxation (1950), Supplementary Memoranda - Administration of National Income Taxes B.3. [Conference Procedure], at 56.

it would be difficult to decide a case contrary to a circular, there would inevitably be strong reliance on the version of the responsible administrative department when trying to ascertain factual matters, and generally the independence of the Conference would be compromised. Further, there could be exchange of personnel between the relevant departments and the Conference, tending to blur the independent character of the Conference.

When the National Tax Tribunal was established, it was placed under the auspices of the Main Office of the National Tax Administration, not the Regional Taxation Bureau. Moreover, despite some limitations in Article 99 of the National Taxes Comrnon Provisions Law, the President of the Tribunal was given the power to make final adjudications in his or her own name. In this respect, some distance was placed between the Tribunal and the main body of the National Tax Administration.

In this way, the creation of the National Tax Tribunal would seem to have been a step in the right direction. However, it remains the case that the Tribunal is strictly an organ of the National Tax Administration, and its personnel are tax officials. Furthermore, Article 99 of the National Taxes Common Provisions Law gives the Commissioner of the National Tax Administration the right of direction in certain situations. In addition, the practical operation of the Tribunal occurs at the level of Local National Tax

Tribunals, which are branch offices of the National Tax Tribunal but are annexed to offices of the Regional Taxation Bureau, a situation which differs little from the operation of the Conferences. Moreover, there is interchange of personnel between the Tribunal and the main body of the National Tax Administration: in the beginning Tribunal members had been appointed from members of the public knowledgeable in the area, allowing a fresh operation of the system, but interflow of personnel from the tax authorities gradually led to the Tribunal becoming sullied.

The Tribunal President has the power to make adjudications contrary to National Tax Administration circulars, but is under the direction of the Commissioner of the National Tax Administration in specified circumstances.[21] In particular, Article 99 states:

(1)When the President of the National Tax Tribunal makes an adjudication contrary to the interpretation of laws and orders in a circular issued by the Commissioner of the National Tax Administration or makes an adjudication that will provide an important precedent for the interpretation of laws and orders relating to the implementation of dispositions on national taxes, the President must beforehand submit his or her opinion to the Commissioner.
(2)When the Commissioner receives the submission of the President provided for in paragraph (1), he or she may, upon discussion with the National Tax Council (*kokuzei shinsakai*), direct the President to adjust the opinion, except where the Commissioner finds an opinion favouring the claimant's contentions justified.

The National Tax Council mentioned in Article 99 is annexed to the National Tax Administration, and is made up of up to 10 part-time members selected by the Minister of

[21] National Taxes Common Provisions Law Article 99.

Finance from those with appropriate academic and experiential background. Members serve a three year term, but re-appointments are possible.[22]

From the above analysis, it is clear that the Tribunal has only limited independence and that it is not realistic to expect adjudications that contradict circulars. In addition, in the personnel area, the original 'freshness' is being lost in the same way as under the Conference system. From the beginning, most members of the Tribunal appointed from legal circles have resigned without serving their full term. The National Tax Tribunal is not fulfilling the function of an independent organ of review that can review tax dispositions independently of the interpretations of law in circulars.[23]

6.8. The Relationship between Tax Review and the Administrative Review Adjudication Law

The Administrative Review Adjudication Law is the general law relating to administrative review of illegal or improper dispositions and other exercise of public power by administrative agencies. The Law creates three types of administrative review, namely:
(a)objection - to be brought against the disposing authority where there is no superior

authority or where the disposing authority is the responsible minister or head of the relevant bureau or agency;[24]
(b)*first instance review* - to be brought against a superior authority in relation to dispositions by an immediately inferior authority;[25] and
(c)*appellate review* - to be brought in certain circumstances when there is dissatisfaction with the decision under a first instance review, [26]

The Law permits the possibility of additional provision in other legislation for review of administrative dispositions or other exercise of public power.[27]

Chapter 8 of the National Taxes Common Provisions Law creates detailed provisions to deal with review of dispositions based on laws relating to national taxes. It is virtually self-contained and leaves little room for residual application of the Administrative Review Adjudication Law. The only dispositions based on laws relating to national taxes that are not covered by Chapter 8 are:

(a)dispositions relating to liquor manufacturing and sales licences;

[22] See generally, National Taxes Common Provisions Law Article 10.
[23] See Kitano, *supra* n.3, at 377 ff.
[24] Administrative Review Adjudication Law Articles 4 and 7.
[25] Administrative Review ' Adjudication Law Article 5.
[26] Administrative Review Adjudication Law Article 8.
[27] Administrative Review Adjudication Law Article 2(2).

(b)inactivity by the tax authorities in response to an application by the taxpayer;
(c)instructions to the taxpayer relating to administrative review;[28] and
(d) administrative review arising from failure to instruct the taxpayer.[29]

6.9. Judicial Review

Before progressing to litigation to revoke a tax disposition,petitioners are normally required to first put their complaints to administrative review.

However, prior administrative review is not required for litigation to declare an administrative disposition invalid *ab initio* (rather than merely revoking for the future), and such litigation can be commenced at any time - there is no limitations period. In order to make a disposition invalid *ab initio,* it must contain a defect that is both grave and obvious. Since it is irregular and exceptional for there to be grave and obvious defects in tax dispositions (which are, after all, conducted to implement the law) the burden of proof in these cases lies with the plaintiff.

6.9.1. Limitations Period for Revocation Actions

The limitations periods for actions to revoke tax dispositions (*kazei shobun torikeshi soshô*) are as follows.

(a)Where litigation is commenced directly upon the occurrence of the relevant facts without going through administrative review procedures, the limitations period is inferred to be three months from the day the petitioner learns of the disposition, although this situation is not expressly provided for.

(b)For litigation based on the original disposition following NTT review, the limitations period is three months from the day the petitioner learns of the outcome of the review.

(c)Where three months has passed since an objection or NTT review was filed with the Commissioner of the National Tax Administration or the President of the National Tax Tribunal respectively and no decision has been made, the petitioner can immediately commence litigation for revocation any time up to the making of the decision. An action commenced before this three month period will be validated if the objection or NTT review is not completed within that time.

(d)Where one of the grounds expressed in Article 115(1)(iii) of the National Taxes Common Provisions Law is satisfied in relation to one delinquency disposition out of a series, Iitigation must be commenced by three months from when the petitioner learns of the disposition or the occurrence of the next disposition in that series, whichever comes earlier.

[28] Administrative Review Adjudication Law Article 57.

[29] Administrative Review Adjudication Law Article 58.

(e)The three month periods described above cannot be extended, but subsequent initiation of actions will be recognised in some circumstances. In particular, where the petitioner was not able to commence the action in time because of some impediment unattributable to his or her self, the action will be valid if commenced within one week of that impediment ceasing to exist.

(f)When one year has passed from the day of the disposition or the completion of the administrative review, the petitioner can not commence litigation, regardless of his or her state of knowledge.

6.9.2. Non-suspension of Execution

Tax dispositions become executable upon their creation, and the general rule is that execution will not be suspended even if the disposition is subject to judicial review.

As an exception to this general rule, the court can suspend the validity of the disposition or the execution of the disposition or the continuation of proceedings by issuing a stay order (*shukkô teishi meirei*), either at the request of the petitioner or on its own initiative, where there is a pressing need to avoid irreparable damage caused by the disposition or the execution of the disposition or the continuation of proceedings.

6.9.3. Representatives

Only attorneys may represent a party in court. *Zeirishi* and certified public accountants may represent clients in administrative review procedures, but not in litigation.

6.10. Approaches to Finding lllegality

Tax laws do not specify whether the adjudicating bodies are restricted to consideration of issues directly raised by the parties (a view known as *sôten shugi* or the 'adversarial issues approach') or can investigate the totality of the factual matrix (*sôgaku shugi* or the 'total dispute approach') in tax appeals.[30]

The tax authorities and the objections authorities tend to favour the total dispute approach. The National Tax Tribunal generally adopts the adversarial issues approach. Judicial precedent has gone both ways.

[30] Article 186 of the Code of Civil Procedure [*Minji Soshô Hô*] (Law No. 29 of 1890) stipulates that "the court shall not judge matters which are not raised by the parties". Since the National Taxes Common Provisions Law does not have such a provision, it is not necessarily regarded as illegal is the Tribunal concerns itself with issues beyond those filed by the claimant. How;ever, several statements made during debate on the creation of the National Tax Tribunal suggest that hearings were intended to take an adversarial form, with the parties, rather than the Tribunal, playing the leading role. See Ishimura, *supra* n.3, at 127-8.

6.10.1. The Total Dispute Approach

Under the total dispute approach, where the taxable base or tax amount calculated by the tax authority is in dispute, the legality or illegality of the disposition is decided on the basis of whether the taxable base or the tax amount exceed what was objectively proper at the time of that disposition. Therefore, the tax authorities could raise new issues that were not considered at the time of the correction as a reason to support the legitimacy of the original disposition, and can support the original disposition with materials that were not used as the basis of the correction.

In other words, under this approach, as long as the disposition falls within the bounds of the objectively calculated taxable base or tax amount, new grounds for the disposition can be substituted at the stage of litigation.

In relation to administrative review also, it is common practice to declare a disposition valid if the tax amount falls within the objectively calculated taxable base or tax amount, without analysing the method of reaching that tax amount.

6.10.2. The Adversarial Issues Approach

Under the adversarial issues approach, consideration by the adjudicating authority is restricted to the points alleged to be illegal by the claimant or petitioner in the administrative review or litigation.

From the point of view of procedural fairness and impartiality of appeals procedures, it would seem more appropriate to adopt the adversarial issues approach.

6.11. The Burden of Proof in Tax Litigation

In tax litigation for revocation of a disposition, the burden of proof needs to be assigned to either the plaintiff taxpayer or the defendant tax authority according to the principles of fairness between the litigation parties and justice in court, but there are no express provisions governing this distribution of responsibility.[31] Article 116 of the National Taxes Common Provisions Law does deal with the order for presentation of claims and evidence, but says nothing on the burden of proof.[32]

[31] Under the presumption of correctness (*kôteiryoku*) principle, traditionally, all the actions of the administrative authorities are assumed to be correct. In tax cases before judicial courts, therefore, the burden of proof would be upon the petitioner, except where otherwise stipulated by law. The presumption of correctness principle had been broadly supported among courts and legal scholars since the 1889 Imperial Japanese Constitution (*Dai-nihon Teikoku Kenpô*) was promulgated. See Tanaka, Jiro, *Taxation Law < Third Edition>* [Sozeihô <Daisanpan>] (1990), at 364.

[32] According to the conventional interpretation, Article 116 in the light of the principle of the presumption of correctness, means that the initial burden of proof must be borne by the taxpayer. However, this interpretation is no longer popular. See Kaneko, Hiroshi,

The majority of judicial opinion has favoured the view that where the validity of administrative dispositions is under challenge, since these dispositions are intended to enforce laws, the administrative body has the onus to establish the individual facts that would establish the validity of the disposition.

Currently, legal scholars and the courts favour a liberal interpretation of the *kôteiryoku* principle[33], so that the burden of proof must be borne equally by both the administrative authority and the plaintiff in general administrative litigation. For the purposes of tax litigation, the Supreme Court has stated:

It goes without saying that the burden of proof in disputes about the existence of income or the amount of income derived by the taxpayer must be borne by the tax authority which made the determination.[34]

This is regarded as a precedent on the allocation of the burden of proof in tax disputes. Thus, the general rule that the burden of proof in tax disputes is placed on the original taxing authority.[35]

Where inductive assessment methods[36] and the administrative assessment or correction derived from them are in dispute before the court, the question arises as to whether the taxing authority should bear the burden of proof as in other cases. On this point, the prevailing view is that in principle proof of a likely source of taxable income must be

given by the taxing authority; however, if the determination or correction is prima facie reasonable, the authority's burden is lightened to the extent that the court thinks reasonable.[37]

Taxation Law <Fourth Edition> [Sozeihô <Daiyonpan>] (1992), at 629.

[33] See n.31 .

[34] *Tanaka v. Commissioner of the Tohyo Regional Taxation Bureau* (Supreme Court, March 3, 1963) 9(5) Shômu Geppô 668.

[35] This contrasts with the US situation. See Comment, 'Burden of Proof in Tax Litigation: Offset and Equitable Recoupment' (1966) 16 *Buffalo Law Review* 616; and Ness, Theodore, 'The Role of Statutory Presumptions in Determining Federal Tax Liability' (1957) 12 *Tex Law Review* 321.

[36] Corporation Tax Law [*Hôjinzei Hô*] (Law No. 34 of 1965) Article 131 ; Income Tax Law [*Shotokuzei Hô*] (Law No. 33 of 1965) Article 156. See 4.2.5. for more details.

[37] See Ishiguro Kensetsu K.K. v. Director of Asakusa Tax Office (Tokyo District Court, April 27, 1971) 62 Shômu Geppô 635; and Kuratani v. Commissioner of the Fukuoha Regional Taration Bureau (Fukuoka District Court, December 5 , 1 955) 6 Gyôsaireishû 2821.